

MESSAGE

FROM THE

PRESIDENT OF THE UNITED STATES,

TRANSMITTING,

(In compliance with a resolution of the H. of Representatives of the 18th January last.)

A REPORT FROM

THE SECRETARY OF STATE,

WITH COPIES OF THE CORRESPONDENCE RELATING TO THE

Claims of the Citizens of the United States

UPON THE

Government of the Netherlands.

FEBRUARY 15, 1825.

Read: Ordered that it lie upon the table.

WASHINGTON:

PRINTED BY GALES & SEATON.

1825.

1881

THE CONGRESS
IN SESSION

MISSISSIPPI

PRESIDENT OF THE UNITED STATES

THE SECRETARY OF THE TREASURY

CLERK OF THE HOUSE OF REPRESENTATIVES

GOVERNMENT OF THE DISTRICT OF COLUMBIA

To the House of Representatives of the United States:

I transmit, herewith, to the House, a report from the Secretary of State, with copies of the correspondence relating to the claims of the citizens of the United States upon the Government of the Netherlands, requested by a resolution of the House of the 18th of January last.

JAMES MONROE.

Washington, 7th February, 1825.

In the House of Representatives, the bill was passed by a vote of 100 yeas and 90 nays. The bill was then sent to the Senate, where it was passed by a vote of 70 yeas and 30 nays. The bill was then signed by the President.

DEPARTMENT OF STATE,

Washington, 7th February, 1825.

The Secretary of State, to whom has been referred a resolution of the House of Representatives of the 18th of January last, requesting the President "to communicate to that House any correspondence which may have taken place between the United States, or their agents, and the Government of the Netherlands, relative to the claims of the citizens of the United States on that Government, so far as such information may be deemed by him not injurious to the public interests," has the honor respectfully to submit, herewith, to the President, the correspondence requested.

JOHN QUINCY ADAMS.

LIST OF PAPERS SENT.

1. Mr. Monroe to Mr. Eustis,	9th May, 1815. Extract.
2. Mr. Eustis to Mr. Monroe,	31st Oct. do Copy.
2. a. Baron de Nagell to Dr. Eustis,	17th do do Translation.
2. b. Mr. Eustis to Baron de Nagell,	22d Aug. do Copy.
3. Mr. Eustis to Baron de Nagell,	29th Oct. do do
4. Mr. Monroe to Mr. Eustis,	20th May, 1816. Extract.
5. Mr. Eustis to Mr. Monroe,	5th Aug. do do
5. a. Same to Baron de Nagell,	4th July, do Copy.
6. Same to Mr. Monroe,	6th Oct. do Extract.
6. a. Baron de Nagell to Mr. Eustis,	14th Aug. do Translation.
6. b. Mr. Eustis to Baron de Nagell,	25th Sep. do Copy.
7. Mr. Adams to Mr. Everett,	10th Aug. 1818. Extract.
8. Mr. Everett to Mr. Adams,	25th Feb. 1819. do
8. a. Same to Baron de Nagell,	22d do do Copy.
9. Same to Mr. Adams,	21st June, do Extract.
9. a. Baron de Nagell to Mr. Everett,	14th do do Translation.
10. Mr. Everett to Mr. Adams,	18th July, do Extract.
10. a. Same to Baron de Nagell,	15th do do Copy.
11. Same to Mr. Adams,	8th Nov. do Extract.
11. a. Baron de Nagell to Mr. Everett,	4th do do Translation.
12. Mr. Everett to Mr. Adams,	16th do do Extract.
12. a. Same to Baron de Nagell,	10th do do Copy.
13. Baron de Nagell to Mr. Everett,	9th Dec. do Translation.
14. Mr. Everett to Mr. Adams,	25th Jan. 1820. Extract.
14. a. Same to Baron de Nagell, without date.	
15. Mr. Adams to Mr. Everett,	26th May, 1820. Extract.

No. 1.

Extract of a letter from Mr. Monroe to Mr. Eustis, dated

May 9, 1815.

“In the late European war, the United States suffered great injury in Holland, by the unwarrantable seizure, detention, and even confiscation, of the property of their citizens, by the existing Government. For those acts, there were, in many instances, not the slightest pretext, and in most, if not in all, no justifiable cause. A nation is, in strictness, answerable for the acts of its Government. This ought not to be pressed; though the idea may be brought into view, and the claim kept open. In all instances in which the property has not been disposed of, it cannot be doubted that it will be delivered up. You will endeavour to obtain for our citizens the justice to which they are entitled, for all the losses thus sustained.”

No. 2.

Mr. Eustis to the Secretary of State.

HAGUE, October 31, 1815.

SIR: I have the honor herewith to enclose the answer of the Baron de Nagell, Minister of State for Foreign Relations, to the note presented on the 22d of August, on the subject of certain claims of American citizens, for property taken from them, and confiscated by the Government of this country, in the year 1809; by which it appears that the present Government declines making restitution.

To the note of the Baron de Nagell, I thought it proper to make a reply, (a copy of which is also herewith transmitted) with the view of correcting the misrepresentations of my note, of preserving to the claim its proper ground, and of leaving it open to such future representation as may be judged expedient. In the mean time, and until otherwise instructed, I shall not press the subject.

I have the honor to be,

With perfect respect,

Your obedient servant,

WILLIAM EUSTIS.

HON. JAMES MONROE,

Secretary of State.

No. 2.—a.

Baron de Nagell to Dr. Eustis.

[TRANSLATION.]

The undersigned, Minister of Foreign Affairs, has the honor of receiving the note which Mr. Eustis, Envoy Extraordinary and Minister Plenipotentiary of the United States of America, addressed to him, on the 22d of August, respecting certain claims made by the citizens of the United States upon the Government of His Majesty the King of the Netherlands.

The claim is founded upon this, that the measures which will dispose of the cargoes, the fate of which, was the object of the note, were an act of violence which the French Government forced upon the Dutch Government; and, upon the principle *that Nations are bound by the acts of their Governments, and that this obligation always exists without diminution, whatever be the changes which otherwise take place in the Republic.*

The undersigned has orders to make known, that the King finds in each of these reasons, causes for remaining an absolute stranger to this affair.

In fact, if the ancient Dutch Government itself could not equitably be made responsible for having yielded to an irresistible power at that time; for a stronger reason, it could not be charged with its conduct, and reparation be demanded of it on the part of a Government which did not enter there for nothing.

And if the principle invoked (which the undersigned cannot forbear believing inadmissible in general, and certainly when it is applied to acts of the nature of that in question,) could be adopted in the present case, it would then be upon the Government which succeeded that which exacted the measure, that those interested should press their rights. That is to say, upon the French Government, and not upon that of the King, who, far from homologating the measures forced upon the Government which is just abolished, has constantly announced his disavowal of these systems, and of these acts, which have brought ruin upon so many individuals, and raised up all civilized nations against them.

The undersigned seizes this occasion to have the honor of offering to Mr. Eustis the assurances of his high consideration.

A. W. C. DE NAGELL.

Hague, 17th October, 1815.

No. 2.—b.

Mr. Eustis to the Baron de Nagell.

HAGUE, August 22, 1815.

The undersigned, Envoy Extraordinary and Minister Plenipotentiary of the United States of America, is instructed by his government to invite the attention of his Excellency the Secretary of State for Foreign Affairs to the subject of certain claims of citizens of the United States, upon his Majesty's Government; the facts are as follows:

In the course of the year 1809, a number of American vessels arrived in the ports of Holland with cargoes, consisting of articles, partly the growth of the United States, and partly that of the colonies. The latter portion being the more considerable, was seized by the government at that time in the hands of the ci-devant King of Holland, Louis Bonaparte, and detained in the royal warehouses. In the month of March of the next year, a treaty was concluded at Paris between the Ex-King of Holland, and the Ex-Emperor of the French, by virtue of which the property so detained was made over to the latter. It was soon after conveyed into France, and sold for the benefit of the French Treasury: the whole amounting to about one million of dollars.

This act of iniquity, which had not the slightest pretence or shadow of right to justify it, by which many individuals have been injured and ruined, the undersigned has no doubt will be considered with just disapprobation by a government so enlightened and upright as that of his Majesty the King, nor can it be necessary to urge that nations are responsible for the acts of their rulers, and that changes of government cannot diminish the force of obligations and contracts.

With these impressions, the undersigned feels a confidence that the claims in question will meet with early attention and prompt redress. He has contented himself for the present with making a general statement of the case, the principal features of which, as he presumes, are not unknown to H. E. the Secretary of State for Foreign Affairs. He will be happy to avail himself of any opportunity that may be afforded him to furnish such further details and evidence as may be necessary to a final settlement.

The undersigned takes advantage of this opportunity to offer to H. E. the Secretary of State for Foreign Affairs the assurances of his high consideration.

WILLIAM EUSTIS.

His Excellency BARON DE NAGELL,

Minister of State for Foreign Affairs.

Mr. Eustis to the Baron de Nagell,

HAGUE, October 29, 1815.

The undersigned has had the honor of receiving the note which His Excellency the Minister for Foreign Affairs addressed to him on the 17th instant, informing him that His Majesty declines taking any measures respecting the claims which formed the subject of the note presented by the undersigned on the 22d of August.

As the ground of fact on which the claims in question were represented to rest, appears to have been misconceived by His Excellency the Minister, the undersigned takes the liberty to remark, that he certainly would not have meant to found his claim on the fact, that the measures which decided the fate of the cargoes in question were an act of violence, extorted by the French Government from that of Holland: for he neither knew, nor had he any means of knowing, the motive of those measures. He relied on the fact, that the seizure and confiscation were the act and deed of the Government of Holland; whether the proceeds were converted to the immediate use of that Government, or transferred, for any consideration whatever, to another power, it was not for the claimants to inquire. The Government of Holland had taken their property, and to the Government of Holland they looked for redress. Still less could they inquire into the motives which induced this act of violence on their property. If the sacrifice of this property saved the nation from a greater evil, and this is necessarily included in the supposition of compulsion, the claim to indemnity is, in that case, strengthened.

If this view of the subject be correct, and the Government of the time was bound in justice to restore or make compensation for the property, the argument grounded by His Excellency the Minister, on the supposition of the contrary, loses its force, and the only remaining question will be, whether the present Government, in succeeding to the former, succeeded also to this obligation.

The undersigned cannot permit himself to believe, that His Excellency the Minister intended to question very seriously the correctness of the general principle, that nations are bound by the acts of their Governments. This principle has been too long established and acted upon, and is, moreover, too consonant with equity, to admit of doubt. It is rather presumed, that the Baron de Nagell intended to rest the force of his observation on the idea contained in the latter part of the sentence, namely: that the principle, however generally correct, could not be applied to acts of violence, like the one in question.

The exemption from responsibility would then be founded on the nature of the act of violence. With respect to this, the undersigned begs leave to add, that, if the principle before mentioned is admitted, and the present government succeeds to the obligations of the former,

with the right to claim indemnity for injuries done to the nation under that Government, and with the obligation to repair injuries done to the subjects or citizens of foreign nations, by that Government, he is unable to discern, in the nature or circumstances of the present case, a just ground of exception.

The undersigned avails himself of this opportunity to assure His Excellency the Minister of his perfect consideration and respect.

WILLIAM EUSTIS.

His Ex'y the BARON DE NAGELL,

Minister for Foreign Affairs.

No. 4.

Extract of a letter from Mr. Monroe, Secretary of State, to Mr. Wm. Eustis, Minister Plenipotentiary of the United States at the Hague, dated May 20, 1816.

“From the measures taken with other powers, you will see the propriety of renewing your application to the government of the low countries, for a similar indemnity. The claim is founded on principles universally recognized, and which have existed through all ages. The government of Holland, by which the seizures and confiscations of which we complain, were made, was in full possession of the sovereignty of the nation, and exercised all the rights appertaining to it; it was acknowledged by other powers, to many of whom it sent Ministers, and from whom it received others in return. The Government, *de facto*, of any country is the competent Government for all public purposes. These facts being well known, and the principle of unquestionable authority, it is hoped and presumed, that the Government which is now established there, will admit the justice, and see the propriety, of making the reparation which is claimed. You will bring the subject again before the Government of the Low Countries, in a friendly manner, indicating the reliance which is placed in a satisfactory decision, as well from the high character of the present sovereign as the justice of the claim. Should your demand not be acceded to, it will be proper to leave the affair open for farther discussion. It gives me pleasure to state, that the judicious manner in which you have already treated the subject, has been very satisfactory to the President.”

No. 5.

Extract of a letter from Mr. Eutis to the Secretary of State, dated at the Hague, August 5, 1816.

“Conformably to the instructions contained in your letter of the 21st of May, I have renewed to this Government the claims of the American merchants, for the cargoes seized and confiscated by the Government of Holland, in the year 1809, 10, stating two cases which appeared to me to have peculiar merit. I enclose, herewith, a copy of the note presented on the occasion, and as soon as an answer shall be received, I shall have the honor of transmitting it.”

No. 5.—a

Mr. Eutis to the Baron de Nagell.

LEGATION OF THE U. S. OF AMERICA AT THE HAGUE,

July 4th, 1816.

The undersigned has the honor to inform His Excellency the Baron de Nagell, that, having communicated to his Government the correspondence which has taken place in relation to the claims of certain American citizens, for property seized and confiscated by the Government of Holland, in 1809 and 1810, he has received instructions again to present that subject to the consideration of His Majesty's Government.

The claims in question are considered, as the undersigned has had the honor to state in a former note, to be founded on principles universally recognized, and which have existed through all ages.

The Government of Holland, by which the seizure and confiscation were made, was *de facto* the Government of the nation, in full possession of its sovereignty, exercising all the rights appertaining to it, and acknowledged by other powers with whom it had its diplomatic relations established.

These facts being verified, and the principle being of indisputable authority, the undersigned has reason to hope and expect, from the justice of the claim, and from the well known character of His Majesty, that the subject will be again taken into consideration, and that the result of the inquiry (or examination) will be more satisfactory.

The annexed cases (the particulars of which have been transmitted to the undersigned, with full confidence of indemnification on the part of the owners,) are stated to show, that, in one instance, the cargo was landed in consequence of shipwreck, and, in the other, on the advice of one of the most respectable mercantile houses in Amster-

dam, and by express permission of the constituted authority of the country.

"The ship *Bacchus* being authorized by previous regulations, after having eluded the British blockading squadron, arrived at Amsterdam, in the year 1809, with a cargo of tobacco, amounting by appraisement, to one hundred thousand dollars. She was ordered to depart from this port, although, in so doing, she was exposed to almost certain capture. In endeavouring to get out, she was wrecked. Her cargo was saved and put in store, and subsequently delivered over by the Government of Holland to the French Government."

"In the Spring of 1809, the brig *Baltimore*, with a cargo consisting chiefly of colonial produce, amounting to upwards of forty-two thousand dollars, was ordered for Amsterdam, with instructions to the Captain, on her arrival on the coast, to lay too, and send in by the pilot a letter to the consignees, Messrs. Hope & Co. to learn the state of the markets, and whether the property would be safe in case he should enter. The vessel remained off the coast several days, when letters were received from the consignees, informing of the state of the market, and that, if the cargo should in the first instance be put in the King's store, it would, on being examined, as to its origin (of which satisfactory evidence accompanied it) be delivered to the proprietors. The Captain, in one of his letters, suggested his apprehension of danger of French privateers hovering about the coast. In answer to this, Messrs. Hope & Co. sent him off a protection and a licence to enter, from the King of Holland. On receiving this letter, the Captain proceeded through the Vlie passage to Harlingen, where the cargo was landed, and put in the King's stores. After several months, that part of the cargo which was the growth of the United States, was delivered to the consignees. In the month of August, 1810, the residue of the cargo was sent to Antwerp, and there sold and disposed of, with other American property, by virtue of an order from the King of Holland."

The undersigned avails himself of this occasion to present to the Baron de Nagell renewed assurance of his high consideration.

WILLIAM EUSTIS.

No. 6.

Extract of a letter from Mr. Eustis to the Secretary of State, dated at the

HAGUE, October 6, 1816.

"By the *Harmony*, for *Baltimore*, whose sailing on Tuesday is announced to me this morning, I have only time to inform you that, with my letter of the 5th of August, I had the honor to enclose to you a copy of the note on the subject of the claims of certain American citizens, presented on the 4th of July, in conformity with my instructions; and to transmit a copy of the answer of the Baron de Nagell, with my reply."

No. 6.—a.

Baron de Nagell to Dr. Eustis.

[TRANSLATION.]

In the note which Mr. Eustis, Envoy Extraordinary and Minister Plenipotentiary of the United States of America, has done him the honor of addressing on the 4th July, to the undersigned Minister of Foreign Affairs, he submits anew, by order of his Government, to the consideration of the King, the claims of certain American citizens, respecting certain confiscations made in 1809, and 1810, by the Government of Holland.

These claims are there represented as founded on general acknowledged principles, and Mr. Eustis therein refers, in that regard, to a preceding note.

But, far from admitting these principles, in all their generality, the undersigned has constantly, in his answers, attached to them, and adduced, divers restrictions.

These restrictions are not discussed in the new official letter; he even approaches the question under another aspect, and confines himself to maintaining that the Government of Holland, in 1809, and 1810, was, *incontestibly, de facto*.

But, besides that, even on this hypothesis, the modifications brought to the principles claimed should preserve all their force, the characters which the note mentions should lead to a conclusion entirely opposite; since, with the exception of the proof, so insignificant in these latter times, of the recognizing of a Government by some other powers, that of Holland, at that time, could not present any of the traits which the note gives as proofs of the sovereignty. For, admitting the correctness of the exposition transmitted by the claimants, two American ships having discharged their cargoes in Holland, without the guaranty of a formal permission, and *protection*, from the constituted authority, the Ex-Emperor of the French, notwithstanding, ordered their transportation to France, and their confiscation.

The history of these two seizures would be then sufficient, alone, to authorize the maintenance that the Government of Holland was not then more *de facto* than *de jure*; and that, if the absolute possession of the sovereignty, and the exercise of rights of which she is in possession, form the *criterium* of it, it was that of France which was *de facto*. It was also on this consideration that the undersigned had orders to send the claimants to the French Government, for the reparation of an act of violence, and power, for which the Government of Holland had never been responsible.

But the assertion that the French Government was, in 1809 and 1810, the sole Government, *de facto*, is supported by still stronger proofs, and the nullity of that of Holland was repeated so publicly in the face of Europe, that, in fine, they obliged a phantom of a King to abdicate a ridiculous authority.

In 1809, a message to the French legislative body announced that Holland was, in reality, only a part of France, and that it was time to make her return to the natural order. An official note gave information that she was only a company of merchants, and that the Ex-Emperor did not consider her as a nation. The *Moniteur* stated that her ports and her coasts were about to be occupied by French troops, and custom-house officers, as they had been after the conquest in 1794, and that all the means for regulating the administration were about to be employed. These troops, and these custom-house officers, actually came, and General Oudinot took possession, in a military manner, of the country.

By a formal treaty of 26th March, 1810, the weak delegate of Napoleon was obliged to consent to it: French *licences* were alone declared valid; the Ex-Emperor, alone, pronounced upon the ships in contravention; the evacuation, and the independence of Holland would not be granted, but when England should have withdrawn the orders in council of 1807; the 10th article decreed that all merchandise coming in American ships, entered in the ports of Holland, after the 1st of January, 1809, should be sequestered, and belong to France, to be disposed of as she should judge proper; and that every store-house, (magazine) of prohibited articles, should be seized in their territory. A shadow of independence still existed—the French troops did not occupy the capital; the last shadow must disappear, and the troops entered Amsterdam.

The undersigned ought, therefore, to make known to Mr. Eustis that the objections opposed to the pretensions of the claimants not having been removed, and the exposition transmitted in his last note, still supporting these objections; besides, that the two seizures, of which mention is therein made, took place after the term of the 1st January, 1809, and the last even the 10th August, 1810, that is, after the union with France; the King can only continue to regard these claims as absolutely foreign to the present Government of the Netherlands.

The undersigned has the honor to renew to Mr. Eustis the assurances of his high consideration.

A. W. C. DE NAGELL.

Hague, August 14, 1816.

No. 6.—b.

Mr. Eustis to the Baron de Nagell,

HAGUE, September 25, 1816.

The undersigned, Envoy Extraordinary and Minister Plenipotentiary of the United States of America, has the honor to acknowledge the receipt of the note of his Excellency the Baron de Nagell, Minister of State for Foreign Affairs, dated the 4th of August, wherein

it is maintained, that the person exercising the supreme authority by which the property of certain American citizens was seized and confiscated, in the years 1809 and 1810, was not *de facto* the Sovereign of this nation.

In stating in his last note (what he had not believed would have been contested) that Louis Napoleon was, at the time, Sovereign *de facto*, the undersigned conceived himself fully justified by the circumstance of his exercise of all the functions of sovereignty for several years, in the face of all Europe; his reception and acknowledgment by the States General, and the other constituted authorities of the nation, civil, military, and ecclesiastic; and by his official intercourse with them, from the time of his arrival in the country, to that of his abdication.

His diplomatic relations with other nations were adduced as corroborating the evidence of his sovereignty; and it is still believed that an interchange of public Ministers with Russia, France, Denmark, Prussia, Austria, Spain, and other powers, is not considered by the most respectable nations in Europe, an insignificant evidence of sovereignty, even "in these modern times."

The treaty of March, 1810, which transferred the property in question to the French Government, appears, in itself, to have been an act of sovereignty, not bearing any evidence of violence, and if it should be alleged that it was coerced by the power or influence of France, the rights of the claimants, whose property had been antecedently seized, ought not, it is contested, to be affected by an act over which they had no control.

The message to the French Legislature in 1809, announcing "that it was time to embody Holland with the mother country," the publication, in the *Moniteur*, stating "that her ports and stores were to be occupied by French troops," &c.; the military possession of the capital by General Oudinot, as stated in the note of his Excellency the Baron de Nagell, are not at variance with the well known facts, that the abdication of Louis Napoleon, the annexation of Holland to France, and the military occupancy of the capital by General Oudinot, all took place in July, 1810; whereas, the order for depositing the property in the public stores, was issued by the then king of Holland, in the spring of 1809; the cargoes were generally so deposited, in the course of that year; two of them in the winter or spring of 1810; and the whole of them (including that mentioned by the claimant as having been removed to Antwerp, so late as August, 1810,) were transferred to France by virtue of the treaty of March, 1810. Whence it follows that the annexation of Holland to France, with the other circumstances cited in the note of his Excellency, cannot be construed to affect the claims.

With respect to the limitations or restrictions attached by his Excellency to the principles on which the claims are founded, the undersigned has had the honor to state, in a former note, that he was unable to discover, in this case, a just ground of exception to those principles, and must persist in objecting to the admission of any limitations or restrictions tending to impair them.

Availing himself of this occasion, the undersigned has the honor to present to his Excellency the Baron de Nagell the assurance of his high consideration.

WILLIAM EUSTIS.

No. 7.

Extract of a letter from Mr. Adams to Mr. Alexander H. Everett, Charge d'Affairs, at the Hague, August 10, 1824.

“No principle of international law can be more clearly established than this. That the *rights* and the *obligations* of a nation, in regard to other states, are independent of its internal revolutions of government. It extends even to the case of conquest. The conqueror who reduces a nation to his subjection, receives it, subject to all its engagements and duties towards others, the fulfilment of which then becomes his own duty. However frequent the instances of departure from this principle may be, in point of fact, it cannot, with any color of reason, be contested on the ground of right. On what other ground is it, indeed, that both the governments of the Netherlands, and of the United States, now admit that they are still reciprocally bound by the engagements, and entitled to claim from each other, the benefits, of the treaty between the United States and the United Provinces, of 1782? If the nations are respectively bound to the stipulations of that treaty now, they were equally bound to them in 1810, when the depredations, for which indemnity is now claimed, were committed; and when the present king of the Netherlands came to the sovereignty of the country; he assumed with it, the obligation of repairing the injustices against other nations, which had been committed by his predecessors, however free from all participation in them, he had been himself.

It is fully understood that the European allied powers have acted upon this principle in their support of the claims of indemnities of their subjects, upon the present government of France; and France, on her part, claims from the United States, not only the advantage of every stipulation contracted by the United States with the government of Napoleon. but, by a latitude of construction of her own, privileges which were not intended to be conceded by them.

With regard to the facts upon which the claims of indemnity of our citizens, upon the government of the Netherlands, are founded, it is supposed they are of a nature not to be contested. They are generally cases of seizure and confiscation, by decrees and orders of the government, of the most arbitrary and unjustifiable character. Some of them were, doubtless, attended with circumstances of more aggravation than others. That of the St. Michael, as represented in the pam-

phlet herewith forwarded, is particularly recommended to your attention. In using every proper exertion in your power to obtain from the Dutch Government a recognition of the justice of these claims, and provision for them, you will carefully avoid, both in the manner and substance of your applications, every appearance of useless importunity, and every expression of an irritating or offensive character. They must understand, that, although pursued with moderation and forbearance, the claims will not be abandoned or renounced."

No. 8.

Extract of a letter (marked No. 9) from Mr. Everett, to the Secretary of State, dated Brussels, February 25, 1819.

"SIR: I have the honor to enclose a copy of the note which I have just written to Baron de Nagell, upon the subject of the confiscations of 1809-10. I delayed writing it longer than I otherwise should have done, after my arrival here, in hopes of obtaining some farther information upon the circumstances of the transaction, from the Consular Agent at Amsterdam, to whom I wrote for that purpose, but without success. I have no documents here, beside those which I brought out, and the former correspondence. As the question, however, is, at present, upon the acknowledgment of a general principle, the details are of less consequence; and I fear very much that there will be no immediate necessity for entering upon them. I shall transmit to you the answer of this Government to the application, as soon as I receive it."

No. 8.—a.

Mr. Everett to the Baron de Nagell.

The undersigned, Chargé d'Affaires of the United States, has the honor to inform His Excellency Baron de Nagell, Minister of Foreign Affairs, that he is instructed to lay before his Majesty's Government, once more, the claims of those American citizens whose property was taken and confiscated in 1809, '10, by the arbitrary acts of the late Government of Holland. The Government of the United States entertain a hope, that, although His Majesty was not satisfied of the justice of the claim at the time when it was presented to him before, he will be induced, upon a further consideration of the subject, to adopt a different opinion; and to render that satisfaction to the claimants, which, in the opinion of the American Government, they are strictly entitled to demand.

It is, perhaps, unnecessary to recapitulate in detail the various circumstances attending the several seizures that occurred under the acts in question. The undersigned will mention only one or two cases, which were marked by more than ordinary hardship, and which will show that the Government of Holland, of that day, not only violated the duties of hospitality and justice, but exhibited a total want of those sentiments of self-respect and common humanity, that may often be found among the most barbarous nations. For example, no ruler of any people, civilized or uncivilized, is so utterly destitute of a sense of honor, as to violate his own safe-conduct, and employ the sacred pledge of his word as an instrument of mischief to a friendly power. If such instances have occurred once or twice in the history of modern Europe, they have been marked as an indelible stain on the character of their authors, and of the age. Such, however, was the conduct of the Government of Holland, in the case of the brig *Baltimore*, which arrived at Amsterdam, with a cargo of colonial produce, consigned to Messrs. Hope & Co. in the Spring of 1809. Before she ventured to enter the port, she sent in to obtain information, whether it would be safe to land her cargo: and received from her consignees, a protection and licence from the Government. Notwithstanding this, her cargo was deposited, as soon as landed, in the King's stores, and the greater part of it was afterwards confiscated.

Two of the cases in question are even stronger than this. They are those of the *Bacchus* and the *St. Michaels*, which were driven by stress of weather, and the accidents of the sea, upon the Dutch coast. The former had been destined for Amsterdam, but on her arrival off that port, was informed by her consignees, that it was not safe to enter. On her way out, she was wrecked. Her cargo, which was saved from the violence of the elements, was immediately seized, and subsequently confiscated by the Government. The *St. Michaels* was bound for *Tonningen*, and put into the *Texel* in distress, not being able to keep the sea. Will it be believed, that, under these circumstances, the Government of Holland took possession of her by military force, and seized and confiscated her cargo? Thus, at the present day, and on the territory of one of the first maritime nations of Europe, the wrecks of friendly vessels were plundered under the public authority of the country. A description of violence not unknown, perhaps, to the piratical inhabitants of the northern coasts of Europe, in the dark ages, but altogether unheard of as the act of a civilized community.

It is understood, by the Government of the United States, that the facts upon which these claims are founded, are not disputed; but that the objection made to the liquidation of them arises from doubts that are entertained—whether the present Government is bound, by the law of nations, to make compensation for injuries done by the former; and whether, even admitting this as a general principle, the claimants ought not rather, under the circumstances of the present case, to resort for redress to the Government of France, than to that of the Netherlands. In the expectation that the claim may be objected to on

these grounds, the undersigned will take the liberty of adding a few remarks in confirmation of the view taken by the American Government, of the principles of the law of nations as they apply to this case.

It is regarded by the Government of the United States as a settled and unquestionable principle of public law, that the rights and obligations of nations are in no way affected by their internal revolutions in Government. Political forms may be altered; different persons or families may be called to the administration; but, under every change that occurs, the new Government succeeds to all the obligations, as it does to all the rights of the old one; or, in other words, the nation, though it has changed its rulers, continues to be bound by its own acts. If this were not the case, a nation, by changing its rulers, or its form of Government, could at any time release itself from all its engagements,—a supposition too absurd to be refuted. Hence, the Dutch nation having, through the agency of its public functionaries, confiscated the property of the American merchants, is bound to make reparation for this act of violence, through the medium of the same rulers that committed it, while their functions continue, or of any other Government that may succeed them; since no act of the nation can discharge it from this duty, except the fulfilment of it.

These principles are recognized by the great writers on national law. Grotius observes, that the debts contracted by a nation, under one form of Government, are binding upon it under another; and it is evident that the same reasoning applies to the reparation of an injury. The nation, he adds, cannot escape from the obligations of common honesty, however the form of Government may be altered. Whether it prefers a Monarchy, an Aristocracy, or a Democracy, it is still bound to pay its debts. Puffendorf expresses the same opinions, in nearly the same words, and supports them at greater length: “Public debts,” says he, “are not extinguished by the political changes that occur in a state. Those who maintain the contrary, have asserted, that, as the state can only be bound by its own acts, it is not obliged to fulfil the engagements of an absolute monarch or an oligarchy, whose authority reposes on force alone, and not on considerations of public good. But this reasoning is undoubtedly false, (*sans contredit frivole.*) The acts of the rulers of the state, whatever may be the source and tenure of their authority, are supposed to be the acts of the state itself.”

A nation, therefore, cannot claim to be exempted from holding itself responsible for the acts of a former Government, under the pretence that that Government was founded in usurpation. To do this, would be to suppose, that nations possess the means and the right to decide upon each other's internal policy—a supposition which is not true in fact, and which no people, that values its independence, could, for a moment, admit. The actual rulers of every people must be received by all others as the rightful ones; and it would be not less presumptuous than injurious in foreigners, to pretend to examine their title.

Accordingly, the writer last quoted, extends his remarks farther, to a state of things agreeing precisely with the view supposed to be taken by His Majesty's Government of the circumstances of the present claim. If the rightful sovereign succeeds in dethroning a usurper and recovering his authority, what course is to be taken in regard to the obligations contracted by the usurper during his reign? With the unerring instinct of an honest mind, he decides this inquiry on principles too obviously just to be disputed. The sovereign may exercise his discretion, in regard to general laws and political dispositions; but he is bound, by all those acts and contracts of the usurper, in which the rights of innocent third persons are concerned. Hence, on the view which is probably taken of this subject by His Majesty's Government, upon which the undersigned, as the agent of a foreign nation, is not at liberty to express an opinion, however he might otherwise be disposed to consider it as correct, His Majesty's Government is still responsible in reason and justice and according to the opinion of distinguished publicists, for those acts of the late Government, by which the American merchants acquired a right to compensation—just as much as if the late Government were acknowledged by His Majesty, to have been a legitimate one.

The undersigned will not multiply citations from written or public law to this effect. It is well known to his excellency, that those which have already been quoted, are the leading authorities upon these subjects. In confirmation of what has been advanced, he will, however, observe, that it is believed by the American Government, that the practice of nations is entirely conformable to the principles which have now been stated. On this point, the undersigned begs leave to request the attention of his excellency to the following considerations:

1. In the practice of civilized nations, the stability of treaties, and other public acts of the Government, is never affected by revolutions, or changes of dynasty. If this were not the case, the whole fabric of society would be unsettled at every political movement, and all the titles of private property rendered uncertain. Hence, the present Government of France has maintained, in general, the acts of the preceding one, and amongst others, the sale of the National Domains, though strongly urged by an opposite interest to the contrary; and though one of the German princes adopted a different principle in this particular, his conduct has been publicly disapproved by the Diet of the German Confederation; which has thus given a solemn and most respectable sanction to the rule, that succeeding governments are bound by the acts of their predecessors in all cases where private interest is concerned. On this principle, the treaty concluded in 1782, between the United States of America and the United Provinces of the Netherlands, is admitted by the American Government, and it is presumed by that of His Majesty, to be still in force. If this be the case, it was also in force in 1810, when the confiscations took place. These acts of violence, were, therefore, breaches of a solemn and positive contract, as well as of justice, hospitality, and common humanity; and the present government, with the obligation

to observe the treaty which descended to them from the former one, inherited also the obligation to repair it, where it had been broken.

2. It is evident, that the obligation to redress a wrong, is at least as strong, if not still more binding and positive, than the obligation to pay a debt. Now, there is no rule of national conduct more firmly established and universally practised upon in Europe, than that the debts of the nation shall be held sacred, whatever changes may occur in the Government. All the countries in Europe, in which, by the late occurrences, the former sovereigns have been restored to their authority, furnish instances directly in point, in support of this position. Among the rest, the Government of His Majesty has complied, in this particular, with the dictates of justice and the general usage. The present Government of France has not only assumed the public debt, as it stood at the period of the King's return, but has stipulated, in a convention with Great Britain, to restore to their full original value, those debts due to British subjects, which had been reduced to one third, by the Revolutionary Governments. If the pecuniary obligations of a preceding Government, founded on contract, are thus maintained without dispute by the successor, what good reason can be given, why pecuniary obligations of at least an equally imperious character, because created against the will of the party injured, should be disregarded?

3. The instances just mentioned, of public acts and public debts, are analogous to the case of the present claim, and may serve to illustrate the principles upon which it is founded. But the late transactions between the present Government of France, and the other nations of Europe, furnish a series of cases, still more nearly resembling that of the present claim, and some of a character precisely parallel. By the 19th article of the treaty of Paris of May 30, 1814, the present Government of France undertakes to liquidate private debts of various kinds, due by the former Government, to subjects of all the governments that are parties to that treaty; and, it is believed, makes itself responsible for all demands that could have been made agreeably to the law of nations, upon the former government. It is hardly possible to imagine a more imposing authority in favor of the principle, for which the American Government contends, than this great transaction, to which the principal states in Europe were parties. All these powers undoubtedly considered Napoleon as a usurper, and were disposed to extend every indulgence to the present Government of France. Notwithstanding this, they gave their sanction to the arrangement by which that government became responsible for his public and private contracts. It is presumed, that the subjects of His Majesty among the rest, enjoy at present, the benefit of this arrangement, and have received payment from the present French Government, of debts to a large amount, that were due to them by the last. It would seem not unreasonable, therefore, that they should extend to other nations the same measure of justice of which they have obtained the advantage themselves.

It may be urged, however, that this arrangement cannot be brought as a precedent in the present case, because it makes no provision for spoliations and acts of violence committed by Napoleon and his agents. But this circumstance was owing to the peculiar situation of the contracting parties. They were just emerging from a state of mutual hostility. The acts of violence of which they severally had to complain, were committed in time of war, by declared enemies; and on that account, by the acknowledged law of nations, no satisfaction could be demanded for them, because no satisfaction could have been demanded of the party that committed them. This was the reason assigned for their exclusion, and is recorded as such by Mr. Von Schoell, the historian of these treaties. The French Government, however, went even further than this, in regard to British subjects, and made reparation for confiscations and spoliations committed during the war; thus assuming a responsibility that did not properly belong, by the law of nations, to Napoleon himself. Acts of violence that did not come within the description of damages of war, were provided for in these arrangements. In proof of this, the undersigned, to avoid prolixity, will mention only two remarkable instances, those of the Bank of Hamburg, and of the confiscations in the Duchy of Berg.

In May, 1813, Marshal Davoust took possession of the city of Hamburg, and imposed upon the inhabitants a contribution of forty-eight millions, which they considered it impossible to raise, and declined to pay. Disappointed in this, he placed his seals upon the Bank of that place, and threatened, unless his demand was complied with, to remove the funds, and apply them to his own use. This threat he afterwards executed, and took from the Bank an amount of more than fifteen millions, a great part of which was the property of foreigners and neutrals. A claim for compensation was made by the Senate of Hamburg upon the present French Government, and, in 1816, a convention was concluded, by which this government undertakes to repair the injury done by the former one, and appropriates a capital of ten millions to be applied to this purpose.

A private claim, founded on the confiscations in the Grand Duchy of Berg, is recognized by the fourth article of the convention of November, 1815, between France and the allies. A quantity of cotton and other colonial goods had been seized and confiscated in that Duchy by the agents of Napoleon, under his own immediate orders. Substitute the name of Louis Bonaparte for that of Napoleon, and this is an exact description of the case of the present claimants. What then was the course pursued by the French Government? "As soon as the allied armies had delivered France from Bonaparte and his agents," says Mr. Schoell, in his account of this transaction, "the owners claimed compensation for the damage they had sustained. The Chamber of Commerce of Cologne sent a distinguished counsellor to Paris, to solicit justice from Louis XVIII. The Provisional Government established by the allies at Dupeldorf, promised to present the claim to the Congress at Vienna, if it proved unsuccessful at Paris. It was

unnecessary, however, to take this step. The cause of the claimants was too just not to be recognized by a legitimate government. A full indemnity was granted them by France, for the losses they had sustained, and interest, at the rate of twelve per cent. from the date of the decree of seizure."

The undersigned indulges a hope that the authorities and examples now adduced, will satisfy his Majesty's government of the correctness of the principle upon which the present claim is founded. It is understood, however, that, if this principle were admitted, the further objection will remain, that, under all the circumstances of the case, recourse should rather be had by the claimants to the government of France, than to that of the Netherlands. An opinion of this kind is supposed to be entertained by his Majesty's government, founded on the presumption that the money resulting from the confiscations in question, was finally transferred by Louis Bonaparte to Napoleon, in pursuance of an article in a secret treaty between the brothers, of March, 1810, since made public.

The undersigned can hardly imagine, however, that his Majesty's government will insist very seriously upon this objection. It is a principle too trivial even to admit of argument, that the sufferer must resort for redress to the person or power that did the wrong, and is not bound to follow his property through the several transfers that may have been made of it subsequently to the original confiscation. The government of Holland deprived these claimants of their property, and to the government of Holland they look for satisfaction. Whether these identical articles, or the value of them, was afterwards transferred to France for a sufficient consideration, or extorted from Holland by force, are questions upon which the claimants have no information, and do not even feel themselves at liberty to inquire. They have neither the pretension nor the right to interfere in the international concerns of the governments of Europe.

With these remarks, the undersigned submits the claim to the justice and good faith of his Majesty's Government, and cannot but hope that, upon a consideration of it, they will be induced to regard it in the light in which it appears to the Government of the United States. That government is so fully satisfied of the intrinsic justice of the demand, that they feel it a duty to the sufferers to use all their influence with his Majesty's Government to procure them redress; and the undersigned is instructed to observe, that the claim, though pursued with moderation and forbearance, can never be abandoned or relinquished.

The undersigned avails himself of this occasion to offer to his Excellency Baron de Nagell the renewed assurance of his perfect respect.

A. H. EVERETT.

Brussels, February 22d, 1819.

No. 9.

Extract of a letter, No. 20, from Mr. Everett to Mr. Adams, dated Brussels, 21st June, 1819.

“I have the honor to enclose a translation of the answer of this government to my note on the claims. It is, as I feared it would be, unfavorable. I shall immediately prepare a reply to it, and will, therefore, not trouble you at present with any remarks upon the import.”

No. 9.—a.

The Baron de Nagell to Mr. Everett.

[TRANSLATION.]

BRUSSELS, June 14th, 1819.

The King entertained a confident expectation that the Government of the United States would be satisfied with the answers given to the applications of Mr. Eustis, respecting the American property sequestered in Holland in 1809 and 1810, and confiscated by the French Government, and would refrain from pressing this claim any farther; but it appears, from the last note of Mr. Eustis, and from the memoir which the undersigned Minister of Foreign Affairs had the honor of receiving from Mr. Everett, Chargé d’Affaires of the United States of America, last February, that this is not their intention.

As the note and the memoir contain a statement of the same principles and arguments, with the preceding notes, only more in detail, the Government of the Netherlands might have contented itself with a simple repetition of the former answers; but in order to give a new proof of respect for the American Government, and also of impartiality and justice, the King directed that the facts should be examined anew, with the greatest attention; and that the reasoning on which the claim is founded, should be analysed in all its parts. These two heads will form the leading divisions of the present answer.

In order to have a clear view of the facts, it is necessary to recur to the state of things, at the time when they happened.

The continental system was then in full vigor in Holland, as in all the countries where Bonaparte exercised his supremacy. Some attempts of King Louis to mitigate the severity of it, only ended in provoking his imperious brother to still more rigorous measures.—Thus, upon the remonstrance, to use no harsher term, of the French Minister and his agents, King Louis was obliged to annul his decrees of March 31st, and June 30, 1809, by that of July 29, of the same year; to revoke the slight modifications which they had effected in

the general system; and to decree, that every American vessel which did [not] exactly comply with the existing orders, should be sent back, without being allowed to enter the Dutch ports. By a subsequent decree of February 1st, 1810, American vessels were prohibited from entering at all, and this decree was communicated to the American Consul at Amsterdam.

This state of things, the dependance of King Louis upon his brother, his inability to resist his brother's orders, and the consequent danger of arriving in this country, were well known by sad experience to all the nations that still ventured to maintain any commercial relations with Holland.

After this preamble, which serves to place the facts in their true point of view, the undersigned will proceed to correct the statements by which the parties interested have permitted themselves to disfigure these facts, and to surprise the religion of their government.

On the 24th of July, 1809, and not in the Spring of that year, the *Baltimore*, Captain J. Philips arrived at Amsterdam. According to some of her papers, she was bound to *Tonningen*. Thirty bales of cotton, and the staves which formed a part of her cargo, and which were provided with a certificate from the French consul at *Baltimore*, were delivered to the consignees. The rest of the cargo was stored, according to law, in the king's warehouses, and afterwards delivered to the French authorities in consequence of the treaty of March 6, 1810, and not, as was represented to Mr. Eustis, carried to *Antwerp*, and sold there with other American property, under order from the King of Holland. The license, or pretended protection obtained by the Captain for his free entry, was not a safe conduct, but was intended merely to protect him, if possible, against the French Privateers. It made no alteration in the laws of blockade, to which this ship, as well as every other, was subject.

The *Bacchus*, Captain R. Johnson, arrived at Amsterdam January 11th, 1810. The certificates of origin of her cargo appeared suspicious, and, until farther information could be obtained, her cargo was deposited in the public warehouses, where it remained till the 10th of the following February, when an order came to send the ship and cargo back to sea, according to the above-mentioned decree of February the 1st. The ship was wrecked in going out, and the cargo saved with difficulty. It was then sequestered until, by virtue of the treaty of 1810, it was given up to the authorities of France.

The *St. Michael*, Captain J. Dowson, bound ostensibly to *Tonningen*, put into the *Texel* in April, 1810; but was refused an entry. The captain declined obeying the order to go to sea again, under pretence of the bad state of his ship. He was permitted to take refuge in port, till it could be ascertained whether the ship was able to keep the sea or not. Although the ship arrived after the conclusion of the treaty of 1810, by the tenth article of which it was provided, that "the cargoes of all American vessels entering the ports of Holland after the 1st of January, 1809, should be sequestered, and should belong to France, to be disposed of according to circumstances and the politi-

cal relations with the United States," the government of Holland ascribed the entry of the *St. Michael* to necessity, and interpreted the article as merely authorizing the sequester of the cargo, instead of the delivery of it to the French authorities. The cargo was placed upon the list of American cargoes still in controversy; and it was not till after the union with France, that it was delivered to the director of the French customs.

Mr. Eustis was therefore misinformed, when he was led to suppose that these several cargoes had been confiscated by order of the Dutch Government. It is more probable, on the contrary, from the manifest intentions of that government, which contributed very much to hasten its fall, that the confiscation would not have taken place unless the owners or consignees had been proved by legal process to have contravened the existing and publicly notorious system of blockade, which placed all cargoes under a kind of sequester, and only permitted the entry of American vessels on that condition. And, properly speaking, it was not the treaty of 1810, but the union of Holland to France, that placed these cargoes in the power of the French. This union was effected soon after the conclusion of the treaty, and abrogated it. But, at this epoch, the greatest part of the American cargoes were still in the public warehouses. The political existence of Holland was then terminated. The country passed under the government of France; and the sequestered property was sold by order and for account of the "Imperial Treasury," as Mr. Eustis observes, and the proceeds were accordingly placed there. The confiscation cannot therefore be equitably imputed to a government which had constantly attempted to prevent it: nor can indemnity be claimed of this government, which had already ceased to exist when the confiscation was effected under the authority and for the profit of France. More than this, among the cargoes, ostensibly American, delivered to France, there were several undoubtedly owned in Holland, and others upon which claims existed in Holland for advances made upon them to the captains. While Louis was still nominally king, the Dutch owners and creditors were, nevertheless, obliged to address themselves to the French Government, with their claims of restitution and indemnity. And there is even reason to suppose that the United States themselves made application, at the time, to Bonaparte, in favor of the American owners. So natural and just did it appear to demand compensation from the government which had taken possession of the property.

These details have been drawn from authentic sources: but even if the seizures had been made in the manner described by the parties interested, in their statements to the American Government, they would lead to a conclusion diametrically opposite to the one that has been drawn by that Government.

For, in fact, if these seizures had (to use the expressions of the memoir) borne all the marks of "a revolting breach of the first duties of hospitality and justice; a total want of those sentiments of self-respect and common humanity, to be found among the most barbarous

nations; the perfidious violation of a safe conduct, for the purpose of doing mischief to a friendly power: the plunder of a wreck, and acts of violence of a description known only to the piratical inhabitants of the northern coasts of Europe in the dark ages," what other consequence would follow, but that Holland at this period had no government that deserved the name: that this was a time of anarchy, when all social ties, and all the principles of the law of nations, were trampled under foot; a blank in the moral existence of a people otherwise so celebrated for its hospitality, its justice, its humanity, its respect for the law of nations? And, were it even possible to admit that a legitimate government is responsible for the acts of the usurping government which it overthrew, it would still be necessary to except from the rule such acts as these; for it would be evidently confounding words and ideas, to apply to such a period, and to such proceedings, the names and relations of government, of social order, and of the law of nations.

But, without pushing to exaggeration the circumstances which preceded and attended the confiscation of the American property, it may easily be shown that Holland had ceased for a long time to form an independent state, under a government, acting for itself, and responsible for its conduct. Vattel decides, that a people which has passed under the dominion of another people, no longer constitutes a state, and that the law of nations is not applicable to it: "Such," says he, "were the nations and kingdoms subdued by the Romans. Most of those, even, whom they honored with the name of friends and allies, were not real states. They were governed within by their own laws and magistrates; but without, they were compelled to obey in every thing the orders of Rome." Certainly, in 1809 and 1810, Holland was obliged, not less at home than abroad, to obey in every thing the orders of France.

Having thus corrected the statement of facts, the undersigned will proceed to examine the argumentative part of the memoir.

It has been somewhat difficult to discover the passages cited from the two ancient writers, which are simply quoted, without reference to the places where they are found. A single observation is sufficient to destroy the force of those remarks of Grotius and Puffendorf which appear to be intended, and that is, that they relate to a matter entirely different from the one in question. Hence, it was necessary to recur to induction and analogy to make them apply. The undersigned has sought in vain for any direct decisions on the principle in controversy; and, as it may be presumed that they would not have escaped the observation of the writer of the memoir, it is fair to conclude that none exist. The quotation from Grotius appears to be taken from chap. ix, book 2, of his *Treatise on the Law of Peace and War*. It is sufficient to transcribe it to show that it is foreign to the question.

After quoting an obscure passage from Aristotle upon the point, whether the debts of the state ought, or ought not, to be paid, when the form of government has been changed, which, from the expressions of the philosopher, he appears to have considered doubtful,

Grotius adds, "The debts contracted by a free people, are not extinguished, when they give themselves a King. For the People is still the same, and remains in possession of what belongs to it as a People. It even retains the sovereignty within itself," &c. But first, this chapter, with Barbeyrac's notes, clearly shows, that the ancient publicists were not agreed upon this point. Besides, it is one thing to discuss whether a free people, which voluntarily gives itself a King, and which still remains in possession of its property, and retains the sovereignty within itself, &c. ought to pay the public debts, and perform the engagements which it acknowledges; and another, to determine whether a government which has liberated a People that had been forced to renounce its form of government, and all the attributes of independence, and to receive a King from the hands of a foreign Usurper, is bound to repair all the injuries of which this People was only the involuntary instrument: and to be responsible for all the acts of the mock government, which it came to destroy.

To apply to this case the reasoning of Grotius, in regard to debts and contracts, acknowledged by treaties and special conventions, would be, to take for granted, the point in dispute. The indemnity now claimed, does not belong to the class of acknowledged debts and contracts. On the contrary, the Government of the Netherlands does not admit, and has never admitted that it was due. The memoir assumes, therefore, precisely the point in controversy, which is the existence of the obligation.

Puffendorf repeats the opinion of Grotius, nearly in the same words, and admits, of course, the same answers. But besides that he confessed, that there are differences of opinion upon the subject; and that the passage, like that of Grotius, refers to the obligation, which a nation is under, notwithstanding the changes in the form of government, to adhere to its treaties, contracts, and financial engagements, the argument he uses, favors the opinion of the Government of the Netherlands, it being that the People still possess the property to which the debt is attached. But at the union of Holland and France, the American cargoes were carried away and confiscated; so that Holland no longer possesses the property to which the debt, if it be one, is attached.

But every one knows, that inductions and analogies drawn from the principles of the law of nations, lead naturally to endless discussions, since it is always easy to oppose authority to authority, and citation to citation.

In proof of this remark, it would be sufficient to mention the qualifications with which the two writers who have been quoted, express their opinion even in regard to obligations apparently so evident, as those of fulfilling contracts, and paying public debts. Grotius, nevertheless, declares, plainly, that neither the nation nor the legitimate King are bound to perform the engagements of a Usurper.

Puffendorf repeats the same decision and declares, that the legitimate sovereign, on recovering his rights, may annul the acts of the usurper, if he judges it for the public good: and he applies this remark, not only to laws, but to other measures prejudicial to the state.

Martens, generally so severe in regard to the observation of treaties, acknowledges, that the question whether a treaty is obligatory, or not, depends upon the justice or injustice of the means employed to obtain it. On the principles of the memoir, indemnities, compensations, debts, and treaties, are here synonymous categories. Let us then apply to them, the principles by which publicists limit the obligations of the law of nations, and these restrictions will finish the answer of the Government of the Netherlands.

If it were thought proper to enlarge upon all the assertions in the memoir, it would be easy to shew, by citations from the last of these writers, (whose opinions have the more authority, from his being one of our contemporaries) under what restrictions it is necessary to receive the statement in the memoir, that the actual rulers of every country must be received by all others as the rightful ones: and that it would be not less injurious than presumptuous in foreigners to pretend to question this title. The history of almost all the great diplomatic transactions and the causes of many modern wars attest the contrary.

But, instead of entering upon this incidental discussion, the undersigned will rather proceed to examine the further arguments contained in the memoir.

The first of these is taken from the usage of civilized nations; and it is alleged, that, according to this usage, the stability of treaties is never affected by revolutions or change of dynasty. But, besides that it would be easy to cite many treaties that have been abolished by revolutions, this question does not relate to treaties and stipulations: and, consequently, the remainder of the paragraph falls of itself.

The indemnities, to which France was obliged to consent by the late treaties, appear, to the author, another argument in his favor.

But, if the duty of legitimate Governments, upon their restoration, to redress the wrongs and repair the injuries occasioned by the illegitimate Governments, which they have abolished and succeeded, were founded upon the broad and universally acknowledged principles, supposed in the memoir, the allies would not have failed to appeal to these principles in the preambles of the treaties, or special conventions, by which they thought proper to stipulate the partial restitutions here alleged as examples. These stipulations would then have been superfluous. Their introduction is therefore an indirect proof, that the contracting parties did not consider these indemnities as incontestibly due by the law of nations.

The objects of these stipulations are also worthy of remark. That of the convention with Great Britain was the payment, in their full original value, of debts due to the subjects of His Britannic Majesty, reduced (*tiercés*) by the French Revolutionary Government.

Why did not the other nations who were equally injured by this reduction, obtain the same restitution? The answer is to be found in the particular circumstances that attended the conventions. In proof of this, it is only necessary to compare the treaty of Paris of 1814 with that of 1815. So far was France from considering the indemnities

demanded of her, as the natural and ordinary result of the common principles of the law of nations, that the Duke de Richelieu avowed the contrary. In communicating to the House of Deputies, the treaties and conventions that France had just contracted, he did not hesitate to declare, publicly, (and he has not been contradicted by the other contracting parties) that these stipulations were the result of extraordinary circumstances, in which France found herself placed by the fatality of events. In a different position, he adds, and at other times, we should have to present to the house only one of those acts which compose the historical collection of the public law of nations, and resemble each other so nearly in character. But it is not so, with the transaction we have now to lay before you. It bears, it must necessarily bear, the marks of the situation in which the contracting parties were respectively placed, as also of the interests and considerations resulting from a state of things unheard of in history, unique in its nature, and which will beso of course in its consequences. The nation has been obliged to satisfy not only the pretensions, but the alarms of Europe. Without the power to deny or resist the incontestible superiority, which demanded painful sacrifices, it has seen in those sacrifices, the only means of obtaining peace. France finds herself, by a combination of circumstances, compelled to answer for all the sacrifices that have been made, and all the losses and injuries that have been sustained. The severity of this principle might have been softened in its application by the equity and magnanimity of the sovereigns: but particular considerations influenced their decision, and the recollection of the violence and oppression, by which they had suffered, led the sovereigns, as it were, involuntarily, to adopt measures repugnant to their private feelings: so that their determinations are marked by passions, which their personal generosity disapproves.

If then, the treaties and conventions with France furnish no precedent in this case, the other examples mentioned in the memoir, are also inapplicable, because they are not at all parallel to the claim in question.

By the 19th article of the treaty of March 30th, 1814, the French Government merely engaged to liquidate the debts which it should be found to owe in foreign countries, by virtue of contracts and other formal engagements passed between individuals or private establishments and the French authorities, as well for supplies as for lawful debts: but, far from thinking, with the memoir, that it is scarcely possible to imagine a more imposing authority in favor of the principle maintained by the American Government, the Government of the Netherlands is perfectly satisfied, that this article was not intended to operate in nearly so extensive a way, as is supposed in this paragraph. Considering that France had received all the resources of Holland, for the first ten months of the year 1813, this Government thought it just, that France should pay to Holland, out of those receipts, the interest on the debt that accrued within that period.

It was agreed to refer the decision of the principle to arbitrators chosen from neutral powers. The decision was in the negative.

If, according to the remark of Mr. Schoell, historian of the treaties of Paris, no satisfaction could be demanded for those who had to complain of acts of violence committed during the war, because no satisfaction could have been demanded of the party that committed them; still less, can this satisfaction be demanded of a party, which not only did not commit them, but which endeavored, by all means in its power, to prevent them, and has derived no advantage from them. If any Government was bound to make this satisfaction, it was the French Government, and that alone.

Mr. Everett appears, however, to find it difficult to suppose, that the Government of the Netherlands will insist seriously on the propriety of appealing for redress to the French Government, it being, according to him, a principle too well known to require proof, that the suffering party must resort for redress to the author of the wrong; and that the Government of Holland having deprived the claimants of their property, it is to that Government they are to resort for satisfaction.

The undersigned has already proved, by facts, that it was not the Government of Holland, but that of France, which committed the spoliation. And he will permit himself, in his turn, to state a comparison, the application of which is too obvious to require to be pointed out. Certain turbulent neighbors compel the head of a family to quit his house, and place an intruder there. Certain strangers, notwithstanding the prohibitions and warnings of this intruder, are imprudent enough to frequent the house, and are forced to leave the property there. Soon after, the same neighbors eject the intruder, and take possession of every thing they find in the house. The head of the family succeeds at length in recovering possession. Is it from him or from the neighbors, that the strangers are to demand satisfaction?

It remains to examine two other instances—those of the Bank of Hamburg, and of the Grand Duchy of Berg. But, in order to make the first of these support the principles of the memoir, it would be necessary (supposing the greater part of the money given up to Marshal Davoust, really belonged to foreigners and neutrals) that these foreigners and neutrals should have addressed their claims, not to the French Government, but to the magistrates of Hamburg, who succeeded the magistrates that permitted the bank to be plundered.

The influence of the events of 1815, was the sole inducement with France to consent to a special convention on this subject, on which nothing had been stipulated in the treaty of 1814. The same force which compelled the Senate of Hamburg to permit money to be taken from the bank, had compelled the Government of Holland to permit the seizure of the American cargoes. In both cases, the French Government was the author of the spoliation.

The claim on account of the spoliations in the Grand Duchy of Berg,

proceeded on different grounds. Agreeably to an order of May 8th, 1813, a seizure was made of colonial goods in possession of several individuals, a part of which had even been purchased of the French Government. They had been compelled to pay, a second time, duties and double duties of impost, although they had paid, at the proper time, what was lawfully due. (Treaty of 1815, Art. 4.) The petitioners demanded restitution, not of the Government, which succeeded that of the Grand Duchy of Berg, but of the French Government: and it is not astonishing, that so just a claim was admitted.

To conclude:—The undersigned has proved, that it was not the Government of Holland that deprived the claimants of their property, but that of France. Had it even been the former, the principle that the present Government of the Netherlands is responsible for all the acts of the preceding Governments, from 1795 to 1813, is one which the King cannot admit without restriction. If it might be admitted in regard to a succession of legitimate governments, it could not be in regard to a government established by violence; and which was not itself responsible for the acts to which it was forced by the tyranny of a foreign usurper: that the political nullity of this Government had long been a matter of public notoriety; and that, if, notwithstanding daily warnings and known prohibitions, foreign merchants or navigators exposed themselves to suffer by it, and neglected to claim satisfaction, at the time, in the proper quarter, they can no longer demand it from the Government of the Netherlands, which had no part in the measures imposed upon the former Governments of Holland, and derived no advantage from them.

The undersigned has the honor to renew to Mr. Everett the assurance of his distinguished consideration.

A. W. C. DE NAGELL.

No. 10.

Extract of a letter from Mr. Everett to the Secretary of State, dated

BRUSSELS, July 18, 1819.

“I have the honor to transmit, enclosed, a copy of my reply to Baron de Nagell’s note of the 14th ult. on the subject of the claims.”

No. 10—*a*.

Mr. Everett to Baron de Nagell, dated

BRUSSELS, July 15, 1819.

In the several notes that have been presented on the part of the American Government to that of the Netherlands, on the subject of the

American property sequestered and confiscated in the ports of Holland, in 1809 and 1810, it has been assumed as an acknowledged fact, that the acts by which the owners were deprived of their property were performed under the authority of the Government of Holland. In the note dated June 14, which the undersigned Chargé d'Affaires of the United States of America has had the honor to receive from His Excellency the Minister of Foreign Affairs, in answer to his note upon this subject of February 22d, it is stated, as one of the grounds upon which His Majesty's Government decline to admit this claim, "that it was not the Government of Holland that deprived the claimants of their property, but that of France."

This objection is preliminary in its nature to every other, and, if well founded, is of course decisive. The undersigned apprehends, however, that the difference between the views of the two Governments upon this point, is more apparent than real; and that no disagreement can possibly exist respecting the material facts; since they are all matters of public notoriety. These facts are no other, than that the several decrees of March, June, and July, 1809, mentioned in the answer, were promulgated by authority of King Louis; that the sequestration of the American property was effected by his officers; and that the treaty of March 16, 1810, by which this property was conveyed to France, was concluded by his Minister, and executed by his Agents. They are all admitted in the answer, and might be proved, if necessary, by official documents. Upon these facts, a question may indeed be made, whether the Government of Holland was influenced in the adoption of these measures by that of France. in such a way as to make the responsibility for them properly devolve upon the latter: and where it is asserted in the answer, that the property was in fact confiscated by France, nothing more seems to be meant, than to assert the existence of such an influence. But this question, as far as it affects the case, is a question of right alone.

It is observed, indeed, in the answer, that, "properly speaking, it was not the treaty of March 16, 1810, but the union of Holland to France, which placed these cargoes in the power of the French; for that the greater part of them were still in the public warehouses at the time of the union." But, as it is repeatedly admitted, that these cargoes were given up to the French, in consequence of the treaty, and while Louis was still King (*eut encore le nom de regne*;) the former remark can only be supposed to refer to their remaining in the public warehouses, after they had been delivered to the French authorities; a circumstance which, if true, has no connexion with the merits of the case.

The material facts being agreed between the parties, the only objections made to the claim by the Government of the Netherlands, are the two following: first, that the French Government was properly responsible, in the first instance, for this confiscation; and, secondly, that, supposing the Dutch Government of that day to have been responsible, the present Government has not succeeded to the obligation. Both these objections were anticipated by the undersigned in

his note; and it will be his object, at present, to support the views there taken of them against the arguments contained in the answer. He will first, however, briefly notice some other points of less importance, in that part of the answer which is termed a correction of the statement of facts contained in the note.

The three cases of the *Baltimore*, the *Bacchus*, and the *St. Michael*, mentioned in the note, were, of course, intended merely as examples of the character of the transactions upon which the claim is founded. Any errors that might have occurred in the statement of either of these cases, would not, therefore, have affected the general principles of the claim. But, upon comparing the account given of them in the answer with that in the note, the undersigned is unable to perceive any considerable variation, much less any correction of such importance as to warrant the charge made upon the sufferers, of permitting themselves to "disfigure facts and surprise the religion of their government."

After a commentary upon these cases, mentioned in the note, it is observed in the answer, that "Mr. Eustis was mistaken in supposing that these several cargoes had been confiscated by order of the Dutch government." Of the three cases, two only had been mentioned by Mr. Eustis; and of both these, it is expressly observed, in the answer, that they were delivered to the French authorities by virtue of the treaty of March 16. This is what the American Government and Mr. Eustis mean by confiscation. Again: Mr. Eustis is said to have been misinformed as to the fact, that the cargo of the *Baltimore* was carried to Antwerp and sold there under authority from the King of Holland. But this inaccuracy which occurred in Mr. Eustis's note of July 4, 1816, is corrected by himself in his subsequent note of September 25, of the same year, (the one referred to in the beginning of the answer,) where he observes, that "the cargoes in general (*including that mentioned by the claimants, as having been removed to Antwerp, as late as August, 1810,*) were transferred to France by virtue of the treaty of March, 1810."

The cargo of the *St. Michael*, it is observed, in the answer, was not subjected to the full operation of the treaty of 1810, but was regarded as a doubtful case, and not delivered to the French till after the Union. In this respect, there is certainly a difference in the information given to the two Governments; since it is asserted, in a statement of this case, drawn up under the direction of the sufferers, by a counsellor of New York, that the cargo was transferred to France, by virtue of the treaty. But the variation even here is not material. The seizure of a vessel which put into port in distress, to obtain assistance, was not authorized, under any pretence, by the existing system, or the law of nations; and, from the time it took place, gave the sufferers a just claim to restoration or indemnity, not to be affected by any subsequent transaction; so that, in this case, the mere act of seizure amounted to confiscation.

With regard to the protection granted to the Captain of the *Baltimore*, there is no variation, in fact, between the statements in the

answer and the note. The undersigned was aware that it was intended as a protection against French privateers; nor did the parties interested claim, in consequence of it, any exemption from the system established at the time the vessel arrived. Had any deficiency or irregularity been found in the ship's papers, the parties would have submitted to confiscation without complaint. But having been furnished by the King with a special pass to protect them from dangers attending the entry, they had a right to consider the faith as well as the justice of the Government pledged to allow them a fair trial.

The date of the arrival of the *Baltimore* is said, in the answer, to have been on the 24th of July, 1809, and not in the spring of that year, as stated in the note. This variation arose from an accidental substitution in the note, of the time of the ship's departure from America, for the time of her arrival, and is, obviously, immaterial.

These are all the differences which the undersigned has been able to discover between the two accounts. It will be seen that, without advertg to an immaterial date, the supposed errors are three in number, two of which are attributed to Mr. Eustis; that one of these had already been corrected by Mr. Eustis, and that, in regard to the other, the writer of the answer is himself mistaken by his own admission. The remaining error attributed to the undersigned, if real, is also immaterial; were it otherwise, it would afford but little foundation for so serious a charge.

The undersigned will now proceed to consider the arguments by which the two principal objections are supported in the answer.

The first of these objections, that the Government of France, and not that of Holland, was properly responsible at the time of the confiscation, and, consequently, is so at present, is maintained on the broad grounds that, without taking into view the particular circumstances of this affair, the Dutch nation was not, at that time, responsible for any of its actions, from the state of political dependance in which it stood with regard to France. This objection is supported by the authority of Vattel, who observes, that "when a people has passed under the Government of another people, it no longer constitutes a state, and is not at liberty to make use (*se servir*) of the law of nations." The applicability of this principle to the present claim, depends upon the time when Holland passed under the Government of France; and this point is decided in the answer, which asserts, after mentioning the epoch of the union of Holland to France, "at that time Holland passed under the Government of France." Now, the confiscations were made before this period. Holland, therefore, at the time of the confiscation, had not, by the admission of the answer, passed under the Government of France, and the remark of Vattel is consequently inapplicable.

But, without taking advantage of this admission, let us grant, with Vattel, that states nominally independent, but substantially subject, like the allies of ancient Rome, are not at liberty to make use of the law of nations. They have no right then to claim the title and privileges appertaining to independent states. Have they, therefore, a

right to exemptions and privileges which independent states never pretended to claim? Have they a right to plunder individuals, and plead their insignificance in justification? Such pretensions are as much at variance with the doctrine of Vattel, as with common sense: for his object is clearly to restrain, rather than enlarge, the privileges of this class of states. It may safely be asserted as a general principle, that, whatever people claims the title, and exercises the powers of an independent state, shall be responsible as such for its conduct. Where, on any other supposition, is the line to be drawn between dependence and independence? There are always two or three powerful states in Europe, which form the central points of the political system, and influence, in a greater or less degree, the movements of all the rest. Are these, then, to be the only responsible Governments? Even if this doctrine were admitted—if it were allowed that a people might sustain, at once, the double character of an independent nation, and a subject province, it would be impossible to establish the fact that this state of things really existed in Holland at the time in question. It is well known, on the contrary, that Holland was, by no means, the least independent of the different powers whose policy was then directed by that of France; and that the reign of King Louis exhibited a continual struggle between him and his brother; that all intercourse between the two countries was prohibited, during the greater part of it, by the decrees of both; and that the final union of Holland to France was, probably, produced by the repugnance of Louis to carry into effect the Napoleon system.

Whether we look at the general relations existing at the time between France and Holland, or at the particular circumstances of the transaction in question, it is equally evident that the Government of Holland was immediately answerable for the confiscated property. If Holland was compelled by unjust means to agree to the stipulation in the tenth article of the treaty of 1810—if, in other words, the amount of property confiscated was, at that time, forcibly extorted from Holland by France, Holland, no doubt, had a good claim on France for restoration; and that claim, and its corresponding obligation, have descended to the respective Governments now established in the two countries, and are still in force. But this circumstance can, in no way, affect the claim of the sufferers, whose property was taken by the Dutch Government.

Hence, there is no hardship in the responsibility which devolves upon the Government of the Netherlands, supposing even that the property passed immediately into the hands of France, and that the Dutch Government derived no benefit from the transaction. The Dutch Government and the claimants were alike, on that supposition, the innocent victims of coercion, and the claim of each for redress is good when prosecuted in the proper quarter. The claimants have a right to demand restitution from Holland, and Holland, in her turn, may require it from France. In this way complete justice will be done to both. But if justice is denied to the sufferers by the Government of the Netherlands, they have no means whatever of obtaining redress. They

can have no claim on the Government of France, since the property was not taken by France from them, but from Holland. If it were admitted even that they were at liberty to follow their property through the hands of the Dutch Government, and demand restitution of it at those of France, they want the necessary means of proving their claim, because they have no knowledge of the conditions upon which this property was transferred to France. There is no privity between them and the French Government. They only know that their property was seized by Holland. They have, indeed, seen the treaty of 1810, since it was published; but neither the American Government, nor the sufferers, nor any body but the Government of the Netherlands, possesses the information which would authorize a resort to the Government of France for redress, on the ground of that treaty. If the Government of the Netherlands are entitled to make such a claim, they are able to show it; and it would be a reflection on the justice of the French Government, and the vigor of that of His Majesty, to suppose that it would not receive due attention.

Is it true, however, that the Government of Holland derived no benefit from making this seizure? Was it, then, an act of wanton and useless injustice, committed without aid or motive, for the profit of France? More probably a regard for what he thought the public good, induced King Louis to agree to this measure as a less evil, rather than expose himself to a greater. He appropriated to the public service a certain amount of property belonging to individuals, to avoid some important mischief, with which the body politic was threatened, in the event of his refusal.

Perhaps the existence of the nation could only have been preserved on this condition. This, then, was private property, taken for the public service, and this is one of the cases in which the obligation of indemnity is most strongly insisted on by the writers on public law. Admit that the policy of Louis was questionable, that he would have done better to sacrifice a precarious and degraded existence, which lasted only three months longer, rather than stain the national character by an act of such signal violence. Still the innocent sufferers are not responsible for his political errors, and the Dutch Government, far from deriving no benefit from the transaction, were indebted to it, on this supposition, for the very being of the nation.

It follows from these remarks, that the influence exercised by France in this affair, has no effect on the claim; and that the French Government, if responsible at all, is responsible to the Government of the Netherlands, and not to the sufferers. The undersigned has already examined the assertion which is made in the answer in support of this objection, that the property was, in fact, confiscated by the Government of France, and not of Holland; and has shown that the contrary is repeatedly admitted in the answer itself. He does not think it necessary to notice particularly the comparison of the head of a family, expelled from his house, by which His Excellency has thought proper to illustrate his views. It has no effect on the argument, since, like most other comparisons, it takes for granted the poin

in dispute. It would be easy to meet it by another, in which the point in controversy should, in like manner, be assumed in favor of the United States; but, as this would add nothing, in reality, to the strength of the case, the undersigned will rather proceed, at once, to the second objection.

The responsibility of the Dutch nation, at the time, being established, its responsibility at present, follows of course, on the plainest principles of public law. A nation is a moral person, and responsible as such, for its actions. This obligation is attached to its existence as a nation, and not to the person of its rulers. It is applicable to all the acts of the nation. It is not affected by changes of magistracy or government; and can only be destroyed by the destruction of the body politic.

These principles appear to be admitted in the answer, under certain restrictions. A distinction is attempted, in the first place, between "undisputed debts and engagements, acknowledged by treaties and conventions," and those of a different character. It is denied that the passages quoted from Grotius and Puffendorf, refer to any obligations but those of the former class; and the undersigned is said to have begged the question in applying them to the present claim.

This distinction, however, is entirely unsupported, both by the language of these writers, and the reason of the case. It is evident that the existence of an obligation does not depend, in any degree, upon its being acknowledged, or upon the form of its acknowledgment. If the debtor, by refusing to acknowledge his debt, could release himself from the obligation to pay it, the situation of the creditor would be precarious indeed. There is no foundation, in the language of these writers, for this dangerous distinction. On the contrary, both their expressions, and the reasons upon which they found the obligation, apply equally to all just debts. "The people," says Grotius, "remains the same." Moral obligation is attached to national, as it is to personal identity; and is no more affected by a change in the rulers of a people, than in the agents of an individual. Nor is it correct, as stated in the answer, that this obligation is attached by Puffendorf, to the possession of the identical articles of which restitution is claimed. The passage has been misunderstood by the writer of the answer. It is as follows:—"The nation is not a debtor precisely in its quality of body politic, but as a holder of common property: so that the debt is attached to the possession of this property and passes with it." The property meant, is the general stock of the nation. In the course of his remarks upon this subject, Puffendorf considers the case of a usurper who has confiscated the property of individuals and transferred it to foreigners; and decides that the transaction is valid, and that the sufferers cannot follow their property through his hands, and reclaim it of the actual holders. He thus determines, expressly, that the obligation to restore, is not attached to the possession of the thing taken.

Thus, both the letter and spirit of these passages are directly applicable to the present claim. Other passages may also be produced in

which the doctrine of national responsibility is laid down in a still more extensive way, so as to preclude the possibility of this distinction. Vattel remarks, (book 2, chap. 18,) that "a nation is obliged to repair the damage it may have occasioned, and the injuries it may have committed;" and, in book 1, chap. 4. "The sovereign, being invested with the public authority, and with all that constitutes the moral personality of the nation, is bound by all its obligations, and possessed of all its rights." The obligation is attached to the nation, without reference to the person of the reigning sovereign, who is, on the contrary, expressly subjected to all the obligations of the nation. These ideas are repeated in various other passages of the same writer; and authority is given to the party injured, to demand reparation and to pursue it, if necessary, by violence. Grotius, (book 3, chap. 17, § 1,) applies this principle to the particular kind of injury inflicted in this case. Nations at war, are not to deprive neutrals of their property; and if they do, they are to make compensation. No reference is made to the person of the reigning sovereign. These passages contain a general statement of the principle of national responsibility, the application of which, in the particular case of a succession in the government, and a change in its form, is made in those quoted before.

A second distinction is attempted on the ground that this obligation was contracted under the reign of a usurper, and that such obligations are not binding. Whatever may be thought of the general correctness of this principle, it cannot be applied to the present claim, because the government under which it arose, was for that purpose, at least, legitimate. Every established government is legitimate as far as foreign nations are concerned. In such cases, therefore, there is no room for the question how far the obligations of a usurper are binding. The independence of a nation consists in its right to exclude all foreign interference in its government, in other words, in the obligation which all foreign nations are under to recognize, as legitimate, the established system. Foreigners being bound to admit the legitimacy of the established system, in the interest of the nation, the nation is, of course, bound to admit it in the interest of foreigners. The great diplomatic transactions, and the modern wars referred to in the answer, far from contradicting this principle, afford the strongest confirmation of it. These wars were made, and these treaties concluded professedly for the express purpose of securing the exercise of the right of self government, and are never defended, on any other ground. The distinction, then, is radically vicious, or, at least, entirely foreign to the present claim.

These principles were advanced in the note, and supported by some authorities, particularly that of Puffendorf. It was, therefore, with some surprise, that the undersigned perceived the name of this writer cited in the answer in favor of this objection. Puffendorf certainly refutes the objection at considerable length, and applies to it, as was observed in the note, the epithet "*sans contredit frivoli*." He lays down the principle above mentioned, that the acts of a government, whatever may be its title, are legitimate and binding, as far as they

regard foreign nations, and decides several cases accordingly. It is true, as the answer remarks, that he supposes a case in which the lawful sovereign may annul the acts of a usurper. This is nothing more than the converse of his former principle, and is stated in the following terms: "As to the acts of a usurper, *whose operation is wholly interior*, the lawful sovereign may annul them upon his return," &c. It is only necessary to cite the passage, in order to show that, taken in connexion with the preceding remarks, it favors, instead of opposing, the views of the American Government. [See Puf. lib. 8, chap. 12, sect. 2.]

Grotius, says the answer, declares plainly that neither the people nor the legitimate sovereign is bound to keep the engagement of a usurper. It has already been shown that this question is foreign to the claim, and Grotius confirms this opinion by the qualification annexed to the above remark: "The king and people are bound to make restitution of what has come to their use." [Grotius, lib. 2, chap. 14, sect. 14.]

The passage from Martens respecting treaties extorted by force, is not applicable to the present claim. The analogy, as far as any exists, is favorable to the claimants. If treaties extorted by force are not binding, property extorted by force ought to be restored.

The views taken by the American Government of the law of nations, as applied to this claim, were supported in every point by the examples of national usage mentioned in the note. These examples were taken from the history of the latest times, and the most important events. They were examples of a great nation, with the sanction of most of the other great nations of Europe, in particular of the Netherlands, making itself responsible for contracts made and spoliations committed, under a foreign government declared to be founded in usurpation. The undersigned will conclude this reply by a few remarks upon the objections made in the answer to the applicability of these examples.

The example of the indemnities granted to foreign nations by France in the late treaties of Paris, is objected to on the ground that the principle of indemnity was not acknowledged by France; but that the Allied Powers took advantage of their situation to force upon her an arrangement which was in itself unjust, and which affords no rule for the conduct of other nations. When it is considered that the government of the Netherlands, if not an immediate party to these treaties, was intimately allied to the powers that concluded them, and has participated largely in the pecuniary benefits resulting from this particular provision, the objection appears somewhat extraordinary. It is stated by Schoel that this government has received from France sixty millions of francs, to be employed in the construction of fortresses, an equivalent for twenty-two millions granted as indemnity, and more than eighty millions in satisfaction of pecuniary debts contracted by the former authorities. The responsibility of the present French Government for the acts of the former one, is, of course, supposed in all these payments; and the Government of the Netherlands could not

possibly have consented to accept these sums, unless it had approved the principle upon which they were paid. Whatever opinion might be formed by indifferent persons of the character of these transactions, it is evident that they may safely be alleged as authority against the parties concerned, or those that derived a profit from them.

But, without insisting on this point, it may easily be shown that the principle of indemnity was, in fact, admitted by France herself. It is even admitted in the passage cited in the answer from a speech of the Duke de Richelieu in the French House of Deputies. The Duke complains, indeed, that the principle was enforced with too much severity. The rigor of it might have been alleviated by the equity and magnanimity of the sovereigns. What is this but saying that the principle in itself is just? Again, the recollections retained by the sovereigns of the violence that had been exercised by France within their territories, prevented them from giving way to those generous sentiments which they might otherwise have indulged. Was this violence, then, the act of Louis XVIII? Unless the French nation under Louis XVIII is responsible for the conduct of the French nation under Napoleon, upon what ground could the violent proceedings of the latter have irritated the sovereigns against his peaceful successor?

But the principle of indemnity is formally admitted by France, in a document much more authentic than the reported speech of a minister to the House of Deputies, namely: in the official note of the French Plenipotentiaries of September 21, 1815, written in answer to the note of the day preceding, from the ministers of the four allied Powers. It is there distinctly stated that the King admits, in principle, the payment of an indemnity; and in the reply of the allied ministers of the 22nd, they observed "The French Plenipotentiaries admit the principle of indemnity."

With regard to the 19th article of the treaty, of March, 1814, to which the undersigned is said to have given too extensive a signification, he will only observe, that, under this article, claims to the amount of thirteen hundred millions of francs, were presented to the French Government; that, by an amicable arrangement, a gross sum of about four hundred millions was allowed in satisfaction of the whole: and that, of this sum, as has been already observed, the Government of the Netherlands is said to have received more than eighty millions. A transaction of this kind is perhaps sufficiently extensive to warrant any language applied to it in the note. The undersigned does not perceive, however, that the principle of responsibility, supposed in the article, is affected, in any degree, by the extent of its application. He must be permitted to express his surprise, that the principle upon which a certain class of private claims was excluded from this arrangement, namely, that they arose from damages committed by enemies in time of war, should have been considered applicable to the present claim. It can hardly be necessary to remind his Excellency that the United States and Holland were not at war, at the time of these confiscations.

The examples of the Bank of Hamburg, and the Grand Duchy of Berg, are objected to, on the ground that, in order to make them support the principle of the note, satisfaction should have been demanded of the Governments of Berg and Hamburg, rather than France. Had the acts in question been performed by those Governments, the objection would be well founded. But at the time of the spoliations at Hamburg, that city was a part of the French empire; of course no Government of Hamburg existed; and in the Duchy of Berg, the seizures were made by the French Government. It is not maintained in the note, that a Government is responsible for all the acts of violence committed on its territory; but, that it is responsible for its own actions.

The paragraph, in which the usage of nations, in regard to treaties and other public acts is alleged in confirmation of the claim, is said in the answer, to "fall of itself," because this is not a question of treaties and stipulations. It was the opinion of the undersigned, that the usage of nations, in this particular, was susceptible of a double application to this case, direct; because the confiscations were a breach of an existing treaty between the two countries; and indirect, because, if this had not been the case, no cause can be shewn, why a nation is not equally responsible for its other acts, as for its treaties and stipulations. The conclusion would therefore follow, immediately, from the obligation in one case, to the obligation in the other.

The claim of Holland, on France, for the payment of a certain term of interest on the public debt, was not rejected on the ground that the present Government of France is not responsible for the acts of the former one, but on the ground that the treaties of Paris were a definitive arrangement of all the claims of the allies on France; and that this had not been provided for. The rejection of it by the arbitrators, is, therefore, no argument in favor of the Government of the Netherlands, in the present case; on the contrary, the making of it by that Government, as it supposes the principle of responsibility, may fairly be urged by the American Government, as an authority in their favor.

The undersigned has thus examined, in detail, the several objections made by his Excellency, to the principles and authorities advanced in support of this claim, and has attempted to shew that the views taken by the American Government, are not affected by them. The demand made by the Government of the Netherlands, in the present case, to be relieved from the operation of the acknowledged principles of justice, to be excused from making satisfaction for an admitted injury, from paying a sum of money, the value of which has actually been received, is a pretension that derogates from common right, and before it can be allowed, the grounds of exceptions must be established in the strictest manner. The undersigned has endeavored to prove, in confirmation of what has been advanced in his former note, that neither of those taken by the Government of the Netherlands is tenable; that the French Government, if responsible at all, is responsible to this country, and not to the United States; and that the question

whether the acts of a usurper are binding on the people is foreign to the claim. If these points have been made out, to the satisfaction of His Majesty's Government, it is presumed that the claim will still be considered valid, and the sufferers admitted to prove their losses, and receive compensation.

The undersigned has the honor to assure His Excellency Baron de Nagell of his high respect.

A. H. EVERETT.

BRUSSELLS, *July 15, 1819.*

No. 11.

Mr. Everett, No. 34, to the Secretary of State, dated at

THE HAGUE, *Nov. 8, 1819.*

I have the honor to transmit the reply of this Government to my note of July 15, on the subject of the claims. From the tenor of this communication, as well as of the former ones, there is very little appearance of a favorable result. It would be improper, I conceive, notwithstanding, to permit the correspondence to finish abruptly with this reply; and I shall, therefore, immediately prepare an answer.

I have the honor to be, with much respect, sir, your very obedient, humble servant,

A. H. EVERETT.

No. 11—*a.*

Baron de Nagell to Mr. Everett, dated at

THE HAGUE, *Nov. 4, 1819.*

[TRANSLATION.]

In the reply which the undersigned had the honor to make, on the 14th of June last, to the note of Mr. Everett, of the 22d of February preceding, the Government of the Netherlands thought itself justified in supposing, that the reasons already assigned in the replies upon the subject of the American property confiscated by the French Government, would have been sufficient to have brought that matter to a conclusion; it indulged a greater confidence of this, after the arguments used in the last note of the undersigned.

The reply transmitted by Mr. Everett, on the 15th of July last, again imposes on the undersigned the ever painful task of opposing,

to the opinions reproduced in that reply, others entirely different. He proceeds to perform it, with every disposition to admit what the evidence requires, and with all the candor of Mr. Everett's reply.

The Government of the Netherlands has always maintained the double position, that it was not the Government of Holland, which, at the period of the acts complained of, did not exist *in fact*, more than *in right*; but that of France, which was responsible for these acts; and that, even supposing this responsibility rested on the former, it could not fall upon the present Government of the Netherlands.

The reply admits, that if the first objection be valid, it is decisive against the claims; but endeavors to profit of some admissions of the answer to refute it.

Although the undersigned is persuaded that it would be easy to show, since the *material facts*, and not appearances, are considered, that there should be on this point no difference of opinion, yet, to avoid repetitions, and not to anticipate his intended remarks, he will here confine himself to observe, that his intention was not simply to assert, that, under King *Louis*, *Holland* was influenced by *France*, (this, too, seemed to be the sentiment of the reply) but, also, that in 1809 and 1810, she was governed so despotically by the latter, that the name of King was merely an object of derision; that *Bonaparte* had not a regard even for appearances; and that, at the period when the American cargoes, particularly of the vessels mentioned in the answer, were conveyed to France, the Government of Holland did [not] exist even in *name*. This is why he said, in terms, *that it was not the treaty of 1810, but the union with France, properly speaking, which placed the cargoes of these vessels in the power of the French*; and that, therefore, the Government of Holland should not be held responsible for a confiscation made *by, and for the profit of, France*, and which would not have happened, had not the Government ceased to exist; that the words, "although King *Louis* had still the name of reigning," relate to a circumstance omitted in the reply, which is, that King *Louis*, though he still retained the title, held it so entirely under the authority of a King, that he was compelled to convey to the French government cargoes belonging to his own subjects, as owners or creditors, but reputed to be American. But, as his object is to remove all doubt, he now declares, that he intended to say, by the citations of the answer, that, in general, the cargoes sequestered, and especially those of the *Baltimore*, the *Bacchus*, and the *St. Michael*, were not confiscated by the French, 'till after the abdication of King *Louis*, and the union of *Holland* with *France*. The remark consequently applies, not to their continuance in the ware-houses after, but before they were delivered to the French authorities.

Before the question of the responsibility of the Government of Holland is considered, the reply first examines a point, which is regarded as of the least importance.

If, by those corrections, the undersigned has rectified the incorrect statement of the claims, the relative importance of those corrections seems to him still greater. It will not be difficult to assign the rea-

sons for this opinion. According to the reply, "any errors that might have occurred in the statement of either of these cases, would not affect the general claim." If, by the *general principles*, is understood the obligation to repair the injuries, it is evident that it is necessary, in the first place, to ascertain if the injury have been committed. For, even if the present Government of the Netherlands could admit that it is responsible for the violence, injustice, and spoliations, of which the Government of Holland is accused, it should then closely examine each claim, to see if its merits will allow it to be embraced by the principle. And the undersigned hesitates not to say, that no one of the cases in question should have this right, because they do not sustain the description under which the claimants have represented them; that they might interest the Government in favor of their complaints.

This assertion is very strong, and the reply says, that but three variations are discovered between the statement and the correction. The first is an error in date, which is pronounced to be unimportant; the second relates to the time and authority which ordered the sale and transportation of one of the cargoes to Antwerp, (which is said to have been indirectly acknowledged and corrected by Mr. Eustis;) and lastly, a third one, in which the undersigned, *from his own acknowledgment*, must be deceived.

Notwithstanding his close examination to discover upon what this assertion is founded, he declares it to have been impossible to perceive it.

Let us again recur to facts. The Government of the United States claims of that of the Netherlands, for the arbitrary acts of the former Government of Holland. Persuaded that this claim could not be sustained, but under the circumstances that accompanied the execution of the existing laws in 1809, till July 1810, and not under the laws themselves; for, upon the supposition of the United States, the Government of Holland, enjoying the rights of independent states, had unquestionably that of prohibiting entry into its ports, as the United States did in their non-intercourse act, (Schoell l. ix. p. 429. et seq.) and even much more, as it was merely in retaliation of the acts of exclusion of the latter Government, that Bonaparte ordered the same measure to be adopted, not only in the ports of France, but also in those of Holland, Spain, Italy, and the Kingdom of Naples; and the right of proceeding even to confiscation, (supposing this may be attributed to King Louis) could no longer be denied to him, since the United States had frequently renewed similar orders of confiscation and sequestration.

The claims, it must be repeated, could only be sustained upon the accessory circumstances, and not upon the measure itself.

The notes having, in preference, denounced three cases, as particularly marked by arbitrary, unjust, and even perfidious circumstances, the Government of the Netherlands, in consequence, ordered an inquest of them to be instituted, so as to be able to judge of the subject understandingly; and as it is very common for complainants to im-

pose upon their Government by exaggerated statements, if the cases selected and produced as those most loudly calling for justice, should be found not to merit the imputations, that the rest might be decided upon more readily.

The first case is that of the *Baltimore*, represented to have been deceived by a licence, safe-conduct, or special passport, under guaranty of the sacred word of King Louis, and induced to go into Holland, where the greater part of her cargo was immediately seized, and subsequently confiscated.

The examination has shown, that this vessel *was bound for Holland*; that she arrived there on the 24th of July, 1809, and not in the spring of that year, which was consequently at a time when the exclusion laws were operative in America: for Consul Bourne had received official communication of it; that the paper solicited by her consignees, of King Louis, was not a special license, (although the claimants have persevered, strenuously, in maintaining it;) nor indeed could it be, for it is known, that *Bonaparte* reserved to himself, exclusively, the grant of them; nor was it even a protection, properly speaking, *to exempt the vessel from the operation of the laws of blockade and sequestration*, but merely a means made use of at that time, to enable vessels at their entry to elude the French privateers, and by which they might not, at least, be captured in our ports, before they could be assured whether their cargoes fell within the terms of the law or not.

Examination being made, that part of the cargo of the *Baltimore*, not subject to the prohibitions, was immediately returned, and the rest, according to the same laws, deposited in the ware houses.

This is, then, what the claimants are allowed to pronounce as a *violation of the rights of hospitality and justice, and as exhibiting a total want of those sentiments of self-respect and common humanity, to be found among the most barbarous nations; for no people, civilized or uncivilized, are so utterly destitute of honor, as to violate their own safe-conduct, and employ the sacred pledge of their word, as an instrument of mischief against a friendly power.*

By these declamations, the undersigned will not say how much the claimants have committed their advocates.

The two other cases have been represented as still stronger.

To avoid repetitions, the undersigned will return to the details of his last note: they shew, that those two vessels received the same treatment they would have received any where else; that every assistance was rendered them, which could have been expected by vessels in similar circumstances; that, so far from having merited the charge of the pretended pillage, at the order of the constituted authority, and of cruelties unknown to pirates, the Government of Holland sought for a pretext to relieve these vessels, and especially the *St. Michael*, from the severity of the stipulations of the treaty of 1810, although her entry was after its conclusion.

To these observations, made in his preceding note, the undersigned will add some particulars brought to light by the late examina-

tion. Although the present Government has, assuredly, no interest in making an apology for a state of things, from which it considers itself perfectly estranged, justice and equity demand this testimony to be rendered to King Louis, that, if the tyranny of his brother forced upon him measures prejudicial to American merchants, his known wishes and constant efforts to prevent, as much as possible, their effects, demand for him the acknowledgment of the Government of the United States. There exist numerous proofs, that, till the moment of his abdication, Louis was solicitously engaged in devising means for securing American cargoes to their owners. Respectable mercantile houses were also consulted on the subject. They confessed, that, from every view of the case, under existing circumstances, sequestration was the best precaution. The veil will not be raised; but it is known that a violent letter was received by Louis from his brother, reproaching him with the emptiness of his warehouses.

The archives of 1809 and 1810 are filled with complaints and threats from the Ambassador of France upon the manner in which Louis eluded the designs of Bonaparte, and favored American vessels. Direct charges on this subject induced the Minister for Foreign Affairs repeatedly to solicit his dismissal.

Lastly, a circumstance of the greatest importance has been established by authentic documents. It is, that, in consequence of the precautions of King Louis, *almost all the cargoes, especially those of the three vessels before-mentioned, were found entire in the warehouses after the period of the abdication of Louis, and that they were not conveyed into France, and confiscated by order of Bonaparte, till, by the incorporation of Holland, the independence and the Government of Holland no longer existed, even in name.* Supposing, therefore, that the Government which succeeded to that of Louis could be rendered responsible, it is plain, that this would be the Government of France, and not that of the present King of the Netherlands, who did not assuredly succeed to the Ex-Emperor.

These observations might suffice; but the same reasons that induced the undersigned to follow the note of the 22d of February, in all its details, operate similarly in regard to the reply.

The important remarks which the undersigned has just made, as to the time when the cargoes fell into the power of the French, answer the objection made in the reply, to the application of a remarkable passage of Vattel, by the undersigned.

The *reply* pretends, that the propriety of that application depends on the time when Holland passed under the Government of France; and that this point has been decided by the undersigned himself, who fixes it at the period of the union with France; and that, as the *confiscations were made previously, the remark of Vattel is therefore inapplicable.*

The reasoning of the undersigned has not been preserved in the reply. After having observed, that the independence of Holland ceased unquestionably at the period of the union, the undersigned, in *another paragraph*, shewed that, for a long time *before that period*, Holland

was in the condition, wherein, according to *Vattel*, a state ceases to be independent and responsible. He still contends, that the more the citation is compared with what preceded and followed the union, its application will appear more perfect.

After this, it is easy to answer the many questions of the reply. They all depend on the representations which the claimants are allowed to paint in such dark colors; but this representation has been shewn to be imaginary.

Have states, nominally independent, but really subject, the right to pillage individuals? It is proved, that the pillage, if there ever was any, was not committed by Holland. *Is not every people that claims the title, and exercises the powers of an independent state, responsible, as such, for its conduct?* *Vattel* informs us, that this title may be fallacious; and that, while preserving certain attributes of an independent state, it may not be so in fact: the difficulty is, moreover, here solved: Was it from the full and free will of Holland, that, when bending under foreign usurpation, she exercised the functions and pursued the measures complained of? The reply itself remarks, that the design of *Vattel* is rather to restrict, than enlarge, the attributes in like circumstances. *What is the line of distinction, it is asked, between dependence and independence?* *Vattel*, in the passage cited, has drawn it. The parallel between the influence always exercised, more or less, by some powerful states, cannot form a comparison with the imperious tyranny, open and irresistible, that was exercised by Bonaparte over all the states, where the troops and agents of France had penetrated. Far from its being impossible to establish, that Holland, even before its incorporation, whether a republic or a kingdom, was in fact but a province of France, the undersigned appeals to the judgment of Europe for the correctness of what is advanced by a modern publicist, whose authority, he presumes to say, will not be questioned. (Schoell.)

“In 1805, Holland, that till then, was obliged to preserve a *certain independence in its relations with France*, received a prince and a master at the hands of the master of France, but Louis was merely the instrument of a foreign usurper. Nothing characterized the dependence of Holland more, than the right assumed by Bonaparte to grant licenses to its inhabitants. The Convention concluded on the 16th of March, 1810, terminated the series of treaties between France and Holland; if the *capitulations* imposed by a conqueror upon the people whom he has reduced to live under his laws, may be always so termed. Louis could not obtain any modifications thereto; those which he proposed, to moderate the measures against the United States, were rejected as imperiously as the rest. He signed the treaty as it had been dictated by the tyrant. It will be difficult to think, that, after having been degraded to this point of humiliation, Louis could hope to preserve the least degree of independence. He, at least, soon proved, how vain such hope would be. Bonaparte, soon after, abolished the kingdom of Holland, which he himself had erected, and united it to France, by a decree of the 9th of July, 1810; thus passed away that

shadow of independence, under which the United Provinces had existed for fifteen years.

It is, finally, *France*, that is accused by England, in the face of Europe, of "the perfidious seizure of all the American vessels and their cargoes, in every port subjected to French arms."

How can the assertions, that it would be impossible to establish by facts, that Holland, with the name of independence, was not in reality a subject province, nor one of those states, whose acts were governed despotically by France, be reconciled with the opinions so generally entertained, and drawn from the history of Holland? Did not the efforts made by Louis to release himself from this despotism, terminate in his disgrace; and did it not serve to give greater weight to the yoke of Holland, and hasten its ruin?

Inquiry into the motives that actuated, or rather propelled Louis in all this transaction, or as to the conduct he should have maintained, is foreign to the present government, and the reply is compelled to conjecture them.

But, as to the assertion, that Holland has ever derived the least advantage from that transaction, it is denied in its *fullest extent*.

It has already been seen, that the *confiscation* was made by France, after the extinction of the Kingdom of Holland, and of course, was made by the French. Mr. Eustis himself has acknowledged, that the product was conveyed to the Imperial Treasury. And the undersigned will add, what is notorious, that Bonaparte, putting an end to the confiscation, of which his brother had used a subterfuge in regard to the American cargoes, so as to gain time and wrest from him, his prey, put aside all other measures, and issued the decree of incorporation.

If, then, it was unjust to claim of the Government of Holland, for an injury in which that government had but a passive part; and from which, it only derived subjection and the ruin of the national fortunes; a just and reasonable government could not insist upon making the present Government of the Netherlands responsible, since the true state of things has been represented, and because it had nothing in common with the usurper, who forced Holland to be both the witness and the victim of his decrees.

But, even supposing, that the confiscations in question can be imputed to King Louis, the losses that were thereby occasioned to the owners, cannot be claimed of the present Government of the Netherlands; this constitutes the second objection, which the reply endeavors to confute.

The principle advanced in the notes of Messrs. Eustis and Everett, that every Government should be responsible for all the acts of the preceding, is one whose nature and consequences will not allow the Government of the Netherlands to admit it, without restrictions.

After having read with attention, the remarks of the reply, in this part of the last note, and the interpretation it persists in giving to the citations whose application it denies, the undersigned may be permitted to say, candidly, that, notwithstanding the novel considera-

tions advanced, those authorities appear to him to relate to a different matter: and it is only by recurring to induction and analogy, which are ever uncertain, (as he remarks,) that they can be made to apply. In a word, that the civilians cited, do not furnish any direct decision upon the principles in point. But, to avoid repetitions, and that this discussion may not degenerate into a literary dispute upon the sense of controverted passages, he will select one; and as the authority of Puffendorf is regarded by the reply as most favorable to the claim, the undersigned will again analyse that passage of this author esteemed to be so conclusive by the reply as to induce the expression of surprise, that an attempt should ever have been made to use it against the principle in question.

The passage is found at chap. 12, lib. 8, which treats of the changes and the decline of states.

In §. 1. Puffendorf maintains, that a people does not cease to be the same, although the form of its government may have been changed; thus, says he, *when a free people is conquered, they never cease to be the same people, provided, the conqueror, that has become master, governs them afterwards as a SEPARATE KINGDOM, AND NOT AS A PROVINCE ANNEXED TO HIS FORMER STATES.*

In §. 2. Puffendorf discusses the question, whether, when a people passes from the absolute Government of a monarch or an oligarchy, to a popular Government, the state, thus become free, should observe the *Treaties, Contracts*, and other acts of the King or aristocrats, under whom they formerly existed. It is on this occasion, while combatting those who maintained the negative, on the ground, that *the state did not properly constitute one, when these obligations were contracted*, that he used the phrase on which the reply rests, that *it is certainly a frivolous reason.* This positive decision he sustains by the aid of a comparison; a mode of argument, which, it seems, ought not to have great force, as the reply contends, it has the defect of supposing what is required to be proved.

The § concludes with this sentence; “*when a people is reduced to the form of a province, and is not consequently of the body of the state, they are by no means, on this account, liberated—from what? From observing all the engagements of the government abolished, and making indemnity for all the losses it may have caused to foreign nations? No: but from paying what it may have previously borrowed; for it did not become a debtor necessarily, as a part of a state, but because certain goods were possessed in common, so that the debt is attached to the property, into whatever hands it may pass.* And Puffendorf adds immediately after, § 3, in the margin, *how far are the acts and engagements of a usurper valid, after he has been expelled; and in the text—the subject, in my opinion, presents no difficulty, IN REGARD TO DEBTS CONTRACTED FOR THE NECESSITIES OF THE STATE.* “*But it is more difficult to decide, if this be generally correct, in regard to all the acts and engagements of an expelled usurper.*” This appears to me to be the most reasonable. *If he who has invaded a state, make an alliance with other states against a common enemy, and afterwards gives*

them a part of the booty to be sold, the alliance, gift, and the sale, exist even after the expulsion of the usurper. For, by virtue of these acts, the other states have acquired a valid right, since they treated with the usurper as with the Chief of the state, the Government of which was in his possession, AND BECAUSE THESE ACTS TENDED TO THE ADVANTAGE OF THE PEOPLE, without implying any crime capable of annulling them.

But, if the usurper have sold to another state goods extorted by means unjust, to the oppressed citizens, shall they afterwards be claimed, when the time may permit? Considering the notions and customs of people, I cannot perceive by what right, those WHO HAVE BEEN DEPRIVED of their goods, can demand them of the purchasers. For, inasmuch, as the usurper sustains himself only by force, he is esteemed as an enemy of the state, and therefore, that part of his booty which has been conveyed to another state from the one he has despoiled, cannot be reclaimed, any more, than the moveable articles acquired by right of war. If the Government of the usurper is become legitimate, by consent of the citizens submitting to it, either tacitly or expressly, foreigners may then consider the goods of which he may deprive the citizens as legitimately confiscated.

It is now easy to determine, if this passage, which is but the amplification of a parallel one in Grotius, favors the reply.

It is wished to use it in proof of the position, that a nation is not affected by the changes of the Government, and cannot be destroyed, but by the dissolution of the body politic.

Puffendorf plainly excepts the case of a state that has become the mere province of another; and this case is precisely that of Holland by its incorporation with France.

It is wished to use it, in proof of the position, that every Government which succeeds another, even that of an usurper, is responsible for all the acts of the preceding Government.

Puffendorf confines this obligation to the public debts contracted for the necessities of the state; and suggests as to the rest, what appeared to him. NOT OBLIGATORY, but REASONABLE.

It is wished to prove from it, that a people is bound to repair injuries done to strangers.

The first case proposed by Puffendorf, is that where a people may keep what has been taken, bought from, or bestowed by an usurper.

Lastly, it is wished to prove by it, that a people is bound to restore what has been pillaged, even if the articles have passed into the hands of others.

Puffendorf, without approaching the second question, whether the obligation to restore be attached to the possession of the thing taken, decides, that, according to the ideas and usages of people, if even citizens (and not, as the vague translation, *individuals*)—oppressed citizens, be unjustly deprived of their goods by an usurper, they have not the right to claim these goods.

All that this passage, therefore, proves, is the distinction drawn by the undersigned, between public debts, the obligation and justice of

which cannot be denied, and engagements whose validity remains doubtful.

The reply contends against the distinction, and condemns the doctrine as dangerous! What doctrine? That the validity of an obligation of a *just debt* (an important correction made by the reply, a few lines below,) depend on its acknowledgment, or the form of this acknowledgment? The undersigned never intended to maintain it; and without proposing difficulties as to the degrees of influence, that the *form* of acknowledgment, or the titles of creditors, frequently have upon the validity of a claim, he will confess, that the condition of *creditors*, in that case, would be as precarious, as the condition of *supposed debtors*, were it sufficient to declare, claim, and sue for, a debt, to establish its existence and justice, and the obligation to pay it. He has not wished to affect this common obligation, but merely to shew, that neither the letter nor the spirit of the passage adduced, is applicable to the present claim.

This may be said of that passage of Grotius, (Lib. III, chap. 17,) as to the conduct towards neutrals, and their reciprocal duties.

It is only necessary to read the examples drawn from Moses, John the Baptist, the Goths, Greeks, Romans, Huns, Allains, &c. on which this publicist has endeavored to establish his principles, to be persuaded how inapplicable they are to the present state of things, and especially to the point in question.

The reply again asserts, that the question whether a legitimate Government be bound by the acts of an Usurper, is *foreign to the case*; and resolves the difficulty by affirming, that the Government of Holland was legitimate in regard to the object in question; for every established Government is legitimate, as far as foreign nations are concerned. The undersigned, in his note, dwelled on this point as only accessory to the principal question, whether a legitimate government be responsible for all the acts of the government it has overthrown. This was supported by some authorities, to which the reply opposed assertions which seemed, to the undersigned, by no means conformable with the just sense of the passages cited, or the principles adopted at the time.

Before he proceeds to prove his positions, the undersigned will not deny that there may be, on this subject, a great incongruity between the theory and the practice.

Notwithstanding the theories which inculcate that the moral of nations is the same with that of individuals, and that the laws which regulate the conduct of an honest man, should also direct the actions of a people, it is not the less true, that a private person will dishonor himself in the opinion of the public, and risque his reputation and fortune, by an association with villains and knaves, yet history teaches us how often interest induces nations to disregard scruples of delicacy, and to contract friendly relations with Usurpers and Tyrants. But it is also true, that the codes of the Laws of Nations oppose the doctrine of the reply, and that political disregard of restrictions and examples which are more operative upon the world.

Martens employs the third book of his *Law of Modern Nations*, to exhibit and prove the reciprocal rights of States relatively to their constitutions; and he remarks, (as the undersigned has said) that, for centuries, and especially since the adoption of the system of the balance of power, the most of the disputes of succession have been determined by these rights.

The remarks of this publicist cannot be reconciled with the assertion, that modern wars and treaties have been made from motives of asserting the right of self-government. The motives assigned by *Martens*, are rather directed to the *maintaining*, or *re-establishing*, of *legitimate governments*.

The undersigned, therefore, cannot but still consider the distinction established in his answer, as both just and applicable to the present claim. He has already shewn the true meaning of the passage of *Puffendorf*, (Lib. 8, chap. 12.) That which he has given to the passage of *Grotius*, (Lib. 2, chap. 14,) cannot be disproved by a mere assertion; and, even if this author does add, that the King, and the people, are bound to restore what has been used to their *profit*, (this is the very term he uses,) this modification cannot render inappropriate the application of the passage adduced, since *Mr. Eustis*, himself, acknowledges that the product of the cargoes confiscated by the French, was deposited in the Imperial Treasury; and the undersigned has, moreover, proved that all this transaction tended not to the *profit*, but the *ruin* of Holland. The same thing may be said of the passage of *Martens*; it would be easy to apply it to the question, but difficult to discover wherein analogy renders it favorable to the claimants, at least against the present Government of the Netherlands. Is it because treaties concluded by force are not obligatory, that property taken by force should be restored? Be it so; but by whom? Undoubtedly, by him who has extorted them; that is, in the present case, by the French Government.

Finally, the undersigned thinks he may safely affirm that the system now prevailing in Europe, does not admit the full recognition of every Government whatsoever.

The undersigned will not pursue these reflections further. As it has been shewn that the confiscations were made by Bonaparte, the question whether or not his Government was legitimate for this object, and whether foreigners are bound to admit the legality of his system, is not for the present Government of the Netherlands to decide, and has, moreover, been settled by the late treaties.

The reply next commences a more important reasoning, and supposes that proofs of its arguments are found in the late treaties, and the history of modern times.

“There is here seen a great nation, which, under the sanction, for the most part, of the other great nations of Europe, particularly of the Netherlands, makes itself responsible for the engagements entered into, and the spoliations committed, under a preceding Government, declared to be founded on usurpation.”

The undersigned in his last note, shewed, that these treaties and examples cited, could not govern in the present case, because, the principle advanced in the memoir did not influence the sovereigns there-to, especially the King of the Netherlands; and it would not have been recognized by France, had not particular circumstances operated on the conventions, and produced the treaties of Paris, in 1814, and 1815.

Far from having, however, the least intention of insinuating, (as seen with surprise in the reply,) that the allies availed themselves of their posture, to impose on France an arrangement *unjust in itself* neither this sentiment nor language are found in the answer.

As the discussion of this subject is more interesting than an inquiry into the opinions, or theories, of civilians, who had in view events that have no connection with a state of things, the possibility of which they could not even have foreseen, the undersigned will proceed carefully to examine this last species of argument.

With this view, he will consider the argument adduced by the reply, and that which the Government of the Netherlands opposes to it.

The position taken by the reply is, that the large sums which *France was bound to pay by virtue of the treaties of Paris, were the indemnifications which she ought to have paid according to the principles of the law of nations, for the violations and spoliations of the preceding Government; for every succeeding Government is responsible for all the acts of the preceding, whether legitimate or usurped.*

The position of the Government of the Netherlands, on the contrary, is, *that the late treaties of Paris did not furnish any argument in favor of this doctrine.*

The arguments of the reply reduce themselves to the following: *that the responsibility of the French Government is properly supposed in all these payments; that the Duke de Richelieu indirectly recognized the principle in his speech to the Deputies; and that it has been distinctly recognized by France, in a document much more authentic than a speech—an official note of the French Plenipotentiaries.*

That the Government of the Netherlands would not have accepted the large sums assigned to it, had it not approved the principle, in virtue of which they were paid; and unless the French nation, under Louis XVIII, be made responsible for the French nation under Napoleon, upon what principle could France and Louis XVIII be made to suffer for the violence of Bonaparte.

The undersigned will oppose to them the decisions of an impartial judge, whose authority will not be questioned by the author of the reply. (Schoell.)

First. *Is the responsibility of the present French Government, or, in other words, the principle that every succeeding Government, whether the preceding be legitimate or usurped, naturally supposed in the late treaties of Paris?*

Entirely to the contrary, if it is to be understood thereby, that Louis XVIII. was responsible for the acts of the preceding Government; the

negotiations could not be difficult; but what was done in France twenty years ago was not by the Bourbons; they neither ordered, nor approved the injuries inflicted on different people; even they, themselves, were the victims of the revolutionary power. (Schoell, *Hist. ab. of the treaties of Paris*, I. x. et 81.)

Was not the principle of the responsibility recognized, indirectly, by the Duke de Richelieu in his speech, laid down formally by the contracting powers, and admitted by the French Plenipotentiaries themselves, in an official note?

One explanation will suffice to refute this assertion.

"In the conference of the 2d of October, 1815, the principal bases were agreed upon. The principle of the cessions (territorial) that France was to make, was here determined, as also the sum of indemnity to be paid by her, for the expenses of the LATE ARMAMENTS."

This indemnity was only in reference to *these LATTER*; proofs of which abound in the details of the negotiation.

The Duke de Richelieu had acknowledged, "that all the products of agriculture, the articles of commerce, and all sorts of property, were sacrificed by every people, alarmed at the return of Bonaparte; and more than a million of soldiers were precipitated upon the frontiers of France."

Let us consult the commentary of Mr. Schoel upon this text.

If the facility with which the inhabitants of France armed themselves against these nations gave them a right to demand a *guarantee*, the sacrifices they made authorizes them to claim an indemnity.

"But even this title was not without objection; after the principle was admitted, that no provinces should be demanded of France under the title of *guarantee*, much less could such cession be demanded under title of *indemnity* for the *expenses of the wars*. The only means which then remained for the *reimbursement of these expenses*, was the payment of a CONTRIBUTION."

This is also what the French plenipotentiaries acceded to in their note of the 21st of September, 1815.

It was then for the *expenses of the late armaments*, that a *contribution* was paid under the title of *indemnity*. If there were still another proof wanting, on the 6th of November, the plenipotentiaries of the four powers again drew up a representation to the Convention, upon the principles by which the 700 millions of contribution to be paid by France should be divided. Nothing is found in that to support the hypothesis of the reply; but the partition was, on the contrary, proportioned to the part that each interested state had taken in the last campaign, considering their contingents. It was on this account that Sweden was excluded from the partition, having, from the commencement, declined all active co-operation.

This is the reply to the objection, that the King of the Netherlands would not have consented to receive the large sums assigned to him, had he not approved the principle of responsibility, in virtue of which they were paid to him. It has been proved that this principle did not *at all* operate in the *partition*.

But, unless the French nation, under Louis XVIII. be made responsible for the conduct of the French nation under Napoleon, upon what principle can Louis XVIII. be held responsible for the outrages of Bonaparte?

Reply: "The king having been so unfortunately situated, as to require the assistance of the Allies, and they being obliged of themselves to terminate their enterprize, it belonged to them alone to deliberate upon what they might judge necessary to avoid like sacrifices in future."

"Will it be objected, that the Allies, in taking up arms against Bonaparte and his adherents, did not consider France as an enemy's country, and, consequently, could not exercise over her the right of conquest? Certainly, that war should not have been one of conquest, and the Allies would have acted against their principles, had they attempted to aggrandize themselves, at the expense of France, by profiting of her misfortunes. But it is not the less true, that the conquest existed in fact; and if the Powers, by declaring that they made war only upon Bonaparte and his adherents, wished to draw off the nation from the usurper, the nation having the right to claim this declaration, should have separated itself from him in fact, and not favored his project, either by a culpable indifference, or by bearing arms in his support."

But, what! could the pacific Louis XVIII. admit these principles?

"When the alliance of the 25th of March was concluded, he had already become a stranger to this war. Did he not also accede to that treaty by a formal act, as the other governments did? but a simple adhesion was only required of his ministers."

The two answers made by the reply to the parts of the note that relate to examples of the Bank of Hamburg and the Grand Duchy of Berg, are favorable to the principles maintained by the Government of the Netherlands. At the period of the confiscation, Holland also made a part of the French empire. The modification, that a government is not responsible for all the acts of violence committed within its territory, has always been held by the undersigned as a principle.

Has not the reasoning that follows, the defect of proving too much? An obligation in one case, to be applied by inference to another, is too great an extension.

We have shewn, that the civilians cited in the reply, have confined the obligations of a government succeeding that of an expelled usurper, to an entirely different object.

Finally, the rejection of the claim of Holland on France, a claim founded on a different basis from that of responsibility, as understood here, supports the assertion made before, that forms often determine the recognition of the most legitimate claims. Vide Schoell, I. xi. p. 538,

These explanations, with those that have already been given in the preceding note, will, doubtless, place the claim in a different point of view from that under which they had been represented to the government of the United States.

In the conclusion, the undersigned will remark, that, to release the claim from the recognized principles of justice, would not only be derogatory to the maxims of common law, but the mere supposition that

the Government of the Netherlands would so act, is what, from a sentiment of dignity, the undersigned must pass by in silence. There is no wrong acknowledged, consequently no satisfaction is due. It is of those who have received the money, that a claim of restoration is to be made. It is, however, difficult to think, that an ordinary tribunal would order restoration, if a creditor had only the arguments of the claimants to urge, of which the reply has had the condescension to be the organ.

The Government of the Netherlands, therefore, must persist in its answer, and refer the claimants to the French Government. Have they so applied? In this case their course is plain. Have they failed to apply, and suffered the proper time to pass by? This is perhaps a tacit proof, that the United States have admitted that no claim can be sustained against the result of measures, which they themselves adopted.

The undersigned seizes this occasion to renew to Mr. Everett, the assurance of his distinguished consideration.

A. W. C. DE NAGELL.

No. 12.

Extract of a letter from Mr. Everett to Mr. Adams, dated

THE HAGUE, November 16, 1819.

"I received your despatch No. 4. No. 1 and 2 have never come to hand.

"I have the honor to enclose a copy of a note, which I addressed to Baron de Nagell on the 10th, in reply to a part of his note of the 4th, on the claims. The basis of his whole argument in this long production, is a loose and incorrect statement of the facts at the commencement, upon which he founds the assertion that the confiscations complained of, were the acts of the French government. This objection, if true, is of course conclusive of itself, against the claim; and, although he professes to waive it in entering upon the discussion of principles, he still introduces it as an answer at every point where the argument presses. The objection was stated in his former note; but, as he admitted, notwithstanding, in detail, all the facts necessary to establish the claim, I thought myself at liberty to conclude that his general assertion was not meant to be taken in so exact a sense as to preclude all further argument. He now retracts these admissions, and states the same objection again: and again accompanies it with new admissions in detail of all the necessary facts. Under these circumstances, I have thought it best to confine the discussion at present to this part of the subject, and to endeavor to come to some explicit understanding with M. de Nagell, upon the facts from which it will be impossible for him to withdraw. If this can be effected,

the discussion of the principles may be resumed with advantage. Should there be much delay in replying to this note, I shall converse with the Baron upon the subject, and endeavor to obtain from him verbally the necessary explanations."

No. 12—*a*.

Mr. Everett to Baron de Nagell.

THE HAGUE, November 10th, 1819.

In the note, which the undersigned, Chargé d'Affaires of the United States of America, had the honor of receiving from His Excellency the Minister of Foreign Affairs on the 4th instant, the position is still maintained, that the property for the loss of which the American Government claims compensation, was confiscated by the Government of France, and not by that of Holland. This objection, as was observed by the undersigned in his last note, is preliminary in its nature to the others, and with a view to avoid, as far as possible, any unnecessary discussion, he will confine his remarks at present to this part of the subject.

The facts which are considered by the American Government, as necessary to the establishment of this claims are few in number and matters of public notoriety. They are no other than the seizure of the property in question by the Government of Holland, under the acts authorizing a sequester, and the transfer of this property to France, by the same Government, by the treaty of March 16, 1810, which is itself the act of confiscation. The transfer is made in the following terms: *Toute marchandise venant sur des batimens Americaines, entres dans les ports de la Hollande depuis le 1 Janvier, 1809, sera mise sur le sequestre et appartiendra a la France pour en disposer selon les circonstances et les relations politiques avec les Etats Unis.*

It is not considered by the American Government as material, whether the property, thus transferred, was delivered to France before or after the Union. The act of transfer was the act of confiscation, and the one which justifies the claim. Whether the property was delivered before or after the Union, it was still delivered by virtue of the treaty.

This view of the subject appears to be sanctioned by the authority of M. de Nagell himself. In his note of the 4th, he observes, that the cargoes of the three ships which have been particularly mentioned, "*were still in the magazines after the epoch of the King's abdication,*" and were not delivered to the French till after the Union: and in his note of June 14, he remarks, that "*the cargo of the Baltimore was delivered to the French authorities by virtue of the treaty,*" and that "*the cargo of the Bacchus was sequestered, till in consequence of the treaty it was delivered to the French authorities.*"

The conclusion appears irresistible that the cargoes of the *Bacchus* and the *Baltimore*, and the others placed in similar circumstances, and not delivered till after the Union, were still delivered by virtue of the treaty.

Should the propriety of this conclusion be denied by His Excellency, there will still remain the cargoes which were actually delivered to the French before the Union, concerning which there can be no dispute, that all the acts attending that seizure and confiscation were performed by the Dutch Government.

The undersigned thought himself at liberty to conclude, from several passages in Baron de Nagell's note of June 14, that this portion of the property in question was admitted to be very considerable; and the following remark in particular, appeared to the undersigned to determine the time of the delivery of the cargoes in general, to some period while Louis retained the name of King. *Among the cargoes reputed American, delivered to France, says M. de Nagell, there were some which were wholly or in part Dutch property. Though Louis had still the name of reigning, the parties interested were not the less obliged to address themselves to the French Government, &c.*

It appears, however, from His Excellency's last note, that the undersigned was mistaken in the construction of this passage, and that M. de Nagell did not intend to admit by this remark that *the cargoes were delivered to France, while Louis had the name of reigning*, and the undersigned is disposed to acquiesce with great readiness in any construction which His Excellency may choose to put upon his own language.

But though M. de Nagell thus declines to admit that the cargoes in question were delivered before the union, it appears to follow, from several passages in both his notes, that at least a certain part of the property was in this situation. Thus, in his note of June 14, he remarks: *A l'époque de la réunion la plus grande partie des cargaisons Américaines étoit encore dans les magasins de l'Etat*: and in that of Nov. 4: *La presque totalité des cargaisons se trouvoit encore dans les magasins après l'époque de l'abdication.*

In both these remarks it seems to be implied, that a certain portion of the cargoes had been delivered to the French before the union.

As the undersigned has had the misfortune to misunderstand in a former case the remarks of His Excellency, he takes the liberty of requesting to be informed, in order to avoid the possibility of a similar error, whether he is correct in both or either of the above conclusions: that is, in supposing His Excellency to admit, that the cargoes of the *Bacchus* and the *Baltimore*, and the others placed in similar circumstances, and not delivered till after the union, were still delivered by virtue of the treaty: and, that a certain portion of the cargoes was delivered to the French before the union.

As the view of the undersigned in making this request, is, to avoid unnecessary discussion, he presumes that Baron de Nagell will readily comply with it: and avails himself of this occasion to offer to His Excellency the assurance of his high respect.

A. H. EVERETT.

No. 13.

Baron de Nagell to Mr. Everett.

[TRANSLATION.]

THE HAGUE, December 9, 1819.

In making a detailed reply to all the arguments contained in the notes of Messrs. Eustis and Everett, especially of the latter, in favor of American property confiscated in Holland, the undersigned was assured, that he entered into the views of his Government; which, supposing that these replies would be submitted to the Government of the United States, confidently believed, that they would be appreciated by a Government that, doubtless, prefers equity to every other consideration.

The short interval between the last note of the undersigned, of the 4th of November, and that which he had the honor to receive of Mr. Everett, on the 11th of the same month, indicates that this course has not been pursued on the present occasion. This last note begins and ends by saying, that, to avoid unnecessary discussions and questions, the inquiry will be confined to one object: whether the property was confiscated by Holland, or by France.

This notice ought to have caused some surprise. The discussions and the questions here determined to be useless, were not provoked by the Government of the Netherlands, but the repetitions of them being confined to two, in the official notes they should have been presumed to be considered as important by those who advanced them; although it will not be denied, that some of them seemed to deserve the character here given of them. For example: they adduced the opinions of some ancient publicists, in regard to a state of things, of which they could never have had any idea; yet, the undersigned thinks he should remark, that this character should not be understood, without reserve; and that although the note of Mr. Everett only discusses the subject before mentioned, the Government of the Netherlands still regards a second position as no less important, which he will state, that his silence may [not] be construed as a tacit acquiescence: it is, that even if the responsibility of the Government of Holland could be established, as to the confiscations of American property, the responsibility of the present Government of the Netherlands could not still be admitted.

In considering the first point as one of the most important, the undersigned, in his last notes, endeavored to establish the assertion, that, from the moment appearances were disregarded, (which, for a greater part of the time, were not respected by Bonaparte,) his brother Louis no longer continued to be King in fact, more than in right; that all his measures were dictated to him, imperiously; that the sequestration which he had been forced to impose on the American cargoes, could not justly be confounded with the act of confis-

cation, since he had changed it into a measure of preservation; that the confiscations (especially of the *Baltimore*, the *Bacchus*, and the *St. Michael*, the three cases specified,) were not made till after his abdication, and of course were made by the French Government; that the treaty of 1810, the clause in which, relating to these cargoes, he had vainly endeavored to soften in its effects, and which seemed to have been imposed as a punishment for his conduct, and to force him to abdicate, was, in the opinion of Europe, but a capitulation imposed by a Despot, for which he alone was responsible, but which was, in fact, abrogated, by the reduction of Holland to a province of the French Empire.

No one of these arguments has been refuted in the note. It merely renews the assertion, that the act of sequestration was equivalent to confiscation; and that it is indifferent, whether this latter took place before, or after, the Union to France. It also endeavors to profit of such an act, as the treaty of 1811.

This tenacity of opinion would authorize the Government of the Netherlands to persist in what it maintains; and the undersigned might here terminate his answer, if, besides a motive of regard, of which he is always pleased to give new proofs, he did not feel it to be his duty to undeceive Mr. Everett, who seems to have inferred from some parts of the answers, that the subject was considered in the same light as he viewed it.

Before he examines the quotations to that effect, the undersigned will make two remarks.

The first is, that, originally, the Government of the Netherlands had great difficulty in ascertaining the injuries upon which the claims were founded, but has had the satisfaction of reducing to order this chaos, which was a necessary result of the events of 1810. This design of this observation is to furnish a reason for some slight shades of difference, which Mr. Everett may have discovered in the successive replies of the undersigned. Thus, after having said in one note, that at the period of the union with France, the *greater part* of the cargoes were still in the State warehouses, owing to the precautions and delays of King Louis, he remarked, in a subsequent one, that *almost the whole* of them were in this condition: and so of some other phrases.

The second remark is, that it ought not to be surprising, if, in such minute replies, some expressions or facts should have needed correction, when more knowledge had been obtained on the subject. This privilege of correction, the undersigned thought himself at liberty to use, after the precedent established by Mr. Eustis.

The object of this remark, is to give greater weight to the assurance, that, in re-perusing his various notes, with impartiality, he has not found occasion to use it in the whole course of his remarks.

Mr. Everett, however, does not disguise, that he thinks he has discovered some passages of a doubtful sense, not to say contradictory; and among others, the following one, in the note of the 14th of June.

Among the cargoes, originally American, delivered to France, there were some decidedly the property of Holland, and others, on which the

inhabitants of Holland had a lien; and although Louis had still the name of reigning, the proprietors and creditors were not the less obliged to address themselves to the French Government.

From this passage, it is thought the inference may be drawn, that considerable parts of the cargoes were delivered by King Louis to France. But, if the quotation which relates to an incidental circumstance, could of itself admit any doubt as to its just signification, the notes in which it is found, and the object for which it was made, render this commentary improper, (inadmissible.)

The notes maintain the position, that the greater part—almost the whole of the cargoes, was not confiscated till after the abdication of King Louis, and the union with France. How then, could it be said of the undersigned, that he had imprudently furnished arms against himself, by making known a fact, before unknown, and what is worse, by making it follow immediately after the place, where it is said, that Holland had ceased to exist, when the confiscation was made by, and for the profit of, France.

It was, moreover, designed to show how dependent Louis was at that time. But if he himself delivered the cargoes in question, to France, it was but natural that his subjects should be referred to the French Government. It was, indeed, in this case, the only step that could be taken. The explanation demanded can then be readily given.

In producing the proofs of the absolute nullity of the Government, there can be no difficulty, except in the selection of them. Thus, the privateers that captured all vessels indifferently, notwithstanding the precautions and certificates of King Louis, were French. The cargoes which King Louis was forced to restore to the French privateers which had captured them within his ports, and despite of the resistance of his *guardes côtes*, belonged to Holland. Finally, the cargoes whose sequestration King Louis dared not raise, were reputed to be American, but belonged to Holland. He had been taught, by much censure, not to commit himself further; and, by a public acknowledgment of dependence, referred the claimants to the French Government.

This last example was considered, at the most, as *ad rem*.

The sense of the citation then presents itself naturally; and, indeed, the only interpretation that can be admitted, is this:

“Among the many cargoes delivered to France, after the Union, there were some which belonged to citizens of Holland, and which had been all included in the sequestration, as the property of Americans:” that although Louis had still the name of King, he retained so little of the power, as not to dare the raising of his own sequestration, but was obliged to refer his subjects to the French Government.

The conviction of the inutility of addressing themselves to Louis, appeared to be felt by the American owners also, (which was insinuated at the same place.) The presumptions of this have been strengthened by discoveries that may be used at a proper time and place.

Mr. Everett, lastly, recapitulates his citations, and concludes his note by requesting the undersigned to answer these two questions:

1st, Whether he does not admit, that the cargoes of the *Bacchus*, the *Baltimore*, and the others placed in *similar circumstances*, and which were not conveyed to France till after the Union, were not delivered in virtue of the treaty? 2d, Whether a certain part of these cargoes was not delivered to France *before* the Union.

As the replies to these questions would be official, as coming from the undersigned, he must excuse himself from making them.

In relation to the first, it would be impossible for him to answer officially, for a presumptive reason. The cargoes of the *Baltimore* and the *Bacchus*, (to which he will add the *St. Michael*, but he is not certain there were any more in the same condition,) were not delivered to France, till after the Government of Holland had ceased to exist.

At this period, the official information ceased. All the information that was afterwards collected, on the subject of these vessels, was procured after that which the undersigned had transmitted. But to know how, and if, the French Government did avail itself, after the abolition of the kingdom of Holland, of a treaty concluded with this kingdom, is a question to which the French authorities alone, who made the confiscation, are prepared to answer.

As to the *second*, the undersigned will observe, that his answer was given, as far as his object required, when he declared, that the cargoes of the three named vessels were not delivered till after the union. But if the design of Mr. Everett were to acquire new information, and further arguments on which to found other suits, it should not be required of the Government of the Netherlands to make any investigation of the subject. To do this, would be in direct opposition to the principle, that the Government which is wished to be made responsible, is estranged from the whole course of conduct pursued in regard to the matter in question.

The undersigned seizes this occasion to renew to Mr. Everett the assurance of his distinguished consideration.

A. W. C. DE NAGELL.

No. 14.

Mr. Everett to the Secretary of State.

Extract from a letter, (No. 40,) dated the Hague, 25th January, 1820.

“ I mentioned in a late letter, that I intended to address a note to the Minister of Foreign Affairs here, resuming the whole argument on the subject of the claims. On farther reflection, I have thought it expedient to take a different course. From several phrases in both the last notes of Baron de Nagell, it appears to be the wish of this Government, that the objection, founded on the fact, that the greater part of the property was not delivered to the French, till after the union, should be particularly submitted to the President's considera-

tion. As there is no motive for pressing the correspondence with extraordinary rapidity, this circumstance has induced me to refrain from any further instances, till I shall have the honor of receiving instructions from you respecting this point. I had prepared a considerable part of the note enclosed with the intention of presenting it at once, and I now transmit it to you as a report upon the present state of the correspondence, and an examination of the last communications from this Government.

The Minister of Foreign Affairs has contented himself with stating the simple fact, on which he founds the objection alluded to, without entering into the reasons, which make it, in his opinion, a sufficient answer to the claim. The strongest form in which it can be presented, seems to me to be the following: "The treaty of March, 1810, was an act extorted by force from the Government of Holland. It is, however, in form, the act of the Government; and the nation is, of course, responsible for its consequences, in fact. But it could not confer any rights on France; and as the Government of Holland had ceased to exist at the time when the French took possession of the property, they must be regarded as having exercised an act of direct violence upon it, for which they are directly responsible: whereas, had it been done before the union, in the form of a transfer from Holland, it would have been an act of indirect violence through the medium of Holland, for which Holland is immediately responsible, and France to her."

It may be urged, however, in answer to this, that, if the property, by the operation of the treaty, was taken out of the course of judicial process, and placed at the disposal of the French, the Government of Holland occasioned the loss, and is therefore the party responsible. The mere fact of sequester, though made in legal form, makes the Government accountable for the property. If it is lost, they must, at least, shew that it was without their fault; and a mere detention, other than what would happen in the due course of law, would make them responsible.

The President will decide how far the objection is admissible. If considered sufficient, the effect of it would be to transfer the claim, for the part of the property affected by it, from Holland to France. In this case, it would probably be thought necessary for this Government to substantiate their assertion by such evidence as could be laid before the French Government. A claim would remain against the Netherlands for the part of the property not affected by this objection, and for all the property to which the existing decrees of sequester were illegally applied. Such, for example, was the case of the *St. Michael*. The law of nations does not permit the application of such decrees to vessels bound to a different country, and driven into port in distress. Many other cases would, probably, in different ways, be found to come within that predicament. An illegal sequester would, of course, make the Government responsible for the loss, however it may have happened.

Should the objection appear insufficient, the claim will still remain against this Government for all the property. In either case, the denial of the responsibility is a further and paramount objection. It does not appear to me to be maintained in the argument; but this Government is evidently resolved to persist in it; and it is, of course, conclusive against every part of the claim. The President will judge, whether it is expedient to continue the correspondence any further on this point: whether, if it be continued, it might not be proper to accompany the next communication with a proposition similar to the one stated at the end of the enclosed note: and whether, if it be the intention of the Government to adopt ultimately any more vigorous measures for the recovery of the claim, on the failure of mere argument, it would be advantageous to give notice of them as an alternative, at the same time that this proposition is presented."

No. 14.—a.

Mr. Everett to the Baron de Nagell.

The undersigned, Chargé d'Affaires of the United States of America, has the honor to acknowledge the receipt of the note addressed to him by his excellency Baron de Nagell, Minister of Foreign Affairs, on the 9th of December. The undersigned has already observed, in a former note, that the denial of the fact of confiscation was a preliminary objection, in its nature, to any other, and, if well founded, necessarily decisive. The assertion upon which this denial rests, does not, however, extend to all the property confiscated. It is only stated by Baron de Nagell, that the greater part of the property, (*presque totalité*) and not that the whole, was in the King's magazines at the time of the union. It was the principal object of the undersigned, in his last note, to point out this defect in the objection, to Baron de Nagell, and to ascertain whether the Government of the Netherlands intended to admit, by making the assertion in this form, that a part of the property was delivered before the union, or whether (as the general terms in which the objection, founded on this assertion, is conceived would seem to intimate,) they were ready to give such an explanation of it, as would make it extend, in form, to all the property. In the latter case, it was the wish of the undersigned to avoid any farther discussion of the principle of responsibility, until the previous objection of fact could be removed. His views in making this request, which was clearly as much in the interest of one party as the other, seem to have been misunderstood by His Excellency, and he declines to give any explanation upon the subject. The objection of fact remains, of course, insufficient in form, as an answer to the whole claim; and the undersigned is compelled, in order to make a complete reply to the note of November, to resume, again, the whole discussion.

The system of defence adopted by the Government of the Netherlands, consists of two parts; a denial of the fact, that the property in question was confiscated by the Government of Holland, and a denial of the responsibility of the present Government for such confiscation, supposing it to be proved.

To establish the first of these points, it is asserted by M. de Nagell, that the greater part of the property was in the King's warehouses at the time of the union of Holland to France, and was not delivered to the French untill after that period.

The first remark, in answer to this objection, is obvious that it relates only to a part of the property, and cannot afford a foundation for a general answer in regard to the whole. The undersigned had the honor, in his last note, of pointing out this objection to M. de Nagell, and of requesting an explanation of his views respecting it, which His Excellency, in his answer, declines to give. The objection, therefore, remains unanswered.

The second answer to this assertion is, that the property in question was ceded to the French Government by that of Holland, several months before the union, that this cession deprived the owners of their property, and is the act upon which the claim is founded; and that the French, in taking possession of this property, only took possession of what belonged to them by a solemn treaty, ratified and executed in the usual forms. The undersigned had the honor of stating this answer, as well as the former one, in his last note, and supported it by passages from M. de Nagell's own notes, in which particular cargoes are said to have been delivered to the French by virtue of the treaty. M. de Nagell, without explaining these passages, observes, in his reply, that the Government have no official information upon this point. This accidental circumstance does not diminish the certainty of the fact, which is still confirmed by M. de Nagell's own testimony, and is too notorious to be called in question. The undersigned has in his possession several of the answers given at the time by the authorities of the country to the parties interested, in all of which it is directly implied, and in some explicitly stated, that the property was delivered to the French by virtue of the treaty; as in that of which he has the honor to transmit a copy annexed.

Thus the single assertion, upon which the first part of the defence is founded, is liable to two objections, either of which is sufficient to destroy its force, and neither of which has yet been attacked.

The second part of the defence maintains that the government of this country is not responsible for the confiscation, supposing it to be proved. In this part of the argument, therefore, the fact of the confiscation is supposed; and this supposition is absolutely necessary: since, if the fact never happened, it is useless to reason upon its consequences. The undersigned will find occasion to recur to this preliminary observation in the course of his remarks, and will only add here, that it was in this view, alone, that the discussion of the principle of responsibility, was denominated unnecessary in his last note.

At the commencement of his argument on this principle in his note of November, Baron de Nagell endeavors to prove that the King of Holland was not responsible for his own actions, on account of the dependence in which he was held by his brother Napoleon. He asserts, that, in the opinion of Europe, the Government of France exercised, at that time, over that of Holland, an influence inconsistent with national independence; and quotes, in support of this remark, as impartial expressions of the opinion of Europe, a passage from Mr. Schoell's abridged history of treaties, and a passage from a declaration of the British Government directed against that of the United States, in a time of war between the two countries. It is enough to mention the source from whence the latter of these passages is taken, to shew that it is entirely inadmissible as authority on any subject against the United States. Mr. Schoell is certainly a respectable compiler; but has not been quoted by the undersigned, as an authority, in matters of opinion on the duties of nations, or as a sufficient organ of the sentiments of Europe. It is not necessary, however, to contest the remarks here cited from this writer, because it does not enter into the system of the American Government to deny that France exercised, at this time, a very great influence over Holland. The precise extent and character of this influence can, of course, be correctly known only to the Government of these two nations. But, in the view of the American Government, the existence of such an influence, however great it may have been, has no effect upon the claim, and the only operation of it would be to establish a corresponding claim of the Government of the Netherlands upon that of France. This idea has been, already, stated and developed several times in the notes of the undersigned, and he will not repeat here what he has before alleged in relation to it. He regrets that it has, hitherto, escaped the notice of M. de Nagell, because it is intended as an answer to one of the principal objections that have been urged against the claim.

With regard to the profit which Holland may be supposed to have derived from this transaction, the undersigned considers the remarks upon this point, in his note of July, as unaffected by those of Baron de Nagell in reply; and even as confirmed by the very forcible manner in which His Excellency insists upon the friendly disposition of Louis towards the Americans. But this inquiry, like the one last considered, is immaterial; since a Government is not the less bound to make restitution of property acquired by violence because it may have been in its turn deprived of the property so acquired by accident as the greater violence of a stronger neighbor. An accidental remark of Mr. Eustis, that the proceeds of the property confiscated were, ultimately, deposited in the Imperial Treasury, has been repeatedly quoted by M. de Nagell, and seems to be regarded as an important admission. The undersigned does not see by what means this character can be attached to it. The fact upon which the claim is founded by the American Government, is the cession of this property by Holland to France; and it is not, surely, very extraordinary, that the proceeds of such a cession should be deposited in the French Treasury.

“But supposing King Louis to have been responsible for the seizure of the property; the responsibility does not devolve upon the present Government, because King Louis was a usurper.”

How is this objection supported?

The undersigned has already stated, in regard to this point, a principle which appeared to him too clear to require proof, that established governments are legitimate in the view of foreign nations. The government of Louis was an established government, in the fullest sense of the word. His title was never questioned in the Netherlands, from the time of his coronation, to that of his abdication. The first posts of the administration were occupied in part by the same persons who now enjoy the confidence of His Majesty and are employed in the Government: and the citizens in general acquiesced in his authority, in various ways, express and implied. According to Puffendorf, in the passage cited by M. de Nagell, the acquiescence of the citizens, either tacit or express, makes the Government of a usurper legitimate, that is, binding on the citizens themselves. Surely, then, foreign nations have a right to consider it legitimate, since they are not bound to be more delicate for the citizens, than they are for themselves. If, to use the strong language of Baron de Nagell, citizens who would consider themselves dishonored by associating in private life with rogues and robbers, think proper to acquiesce in the Government of usurpers and tyrants, it is not for other nations to question their taste any further than their own safety may make it necessary.

What principles are opposed by Baron de Nagell to these plain propositions? The doctrine of Martens, which establishes the exception founded on the principle of self defence; that is, with nations, the principle of self Government. The exception, instead of contradicting the rule, as usual, proves it, because they are only different developments of the same principle. The authority of Martens is, therefore, as the undersigned remarked, in a former note, in favor of the American Government. As applied to the present case, his principle is as follows: “The United States would have had a right to interfere in the Government of Holland, had it been necessary for their own safety.” Does this prove that they had no right to consider the established Government legitimate, when it was not necessary for their safety to interfere? Does it not suppose, on the contrary, that they had not only the right, but were bound in general, to regard established Government as legitimate? In like manner, on the same principle, the Netherlands have a right to interfere in the election of the President of the United States, if it should be necessary for their safety. Does this prove that they have no right to consider, as legitimate, the Government established in the United States? Does it not suppose, on the contrary, that they have not only the right, but are bound, in general, to regard it as legitimate?

The exception established by Martens, which, as has been shewn, supposes the principle maintained by the United States, is the only authority cited by Baron de Nagell in opposition to this principle, nor does he advance any arguments against it. He observes, however,

that it is incompatible with the practice of the present day. What says the Government of Austria, in the late Presidential address to the German Diet, an address which has received the adhesion of Mr. De Martens, the author preferred by M. De Nagell, and a member of the Diet, as well as of the representative of this government in that assembly? They are careful not to entrench upon the *right belonging to every state of the Confederacy to regulate its internal concerns according to its wants and its lights*; and yet the states of the Confederacy enjoy only a qualified sovereignty. How much more, then, does this right belong to states completely independent! The invasion of France by the allies in 1815, is the most remarkable instance in modern history of the exercise of the right of interference. How was it justified by the allies? They published a special declaration, stating that they were obliged, on the principle of self defence, to make a united attack upon Napoleon Bonaparte, but disclaiming the intention of imposing a government upon France. To this alliance the government of the Netherlands acceded, and this is, therefore, their own interpretation of the right of interference. And what is the principle of this *legitimacy* which Baron de Nagell seems to oppose to the doctrine of the American Government? Is it not the very principle upon which the claim is founded, pushed to a much greater extent than is necessary to support it? The legitimacy of the Bourbons, for example: does it consist in having derived an undoubted title to the French crown from the founder of their race, who was, himself, a usurper, without the shadow of a title, or in the length of the time for which their government had been established, and the quiet acquiescence of the French nation in it for a series of centuries? Is it not the European principle, that established governments are not only legitimate, but that they are the only legitimate ones? That they are legitimate to the exclusion of others that might seem more conformable to the theory of political justice? This, if the undersigned is not deceived, is the European doctrine of legitimacy. The United States have no occasion, in the present case, to assert the principle to this extent. They only acknowledge the duty, and claim the right, of regarding as legitimate, for the purpose of its foreign relations, a government which was quietly established, and had received the acquiescence of the people.

Had the Government of the United States, after the establishment of the present constitution, refused to pay the public debt contracted in the Netherlands, during the American war, on the ground that the form of government had been changed; that the debt was contracted under the old confederation; that they could not be responsible for what had been done by former governments; that the government was, at that time, illegitimate, founded in rebellion and usurpation, and not sanctified till some years after, by the acknowledgment of the mother country; and that the contracts of an illegitimate Government were not binding: the Government of the Netherlands would, probably, have replied, with great justice, that, whatever might have been the character of the Government, in the opinion of the mother country, it was acknowledged as legitimate at the time, by the citizens of

the United States of America, and the Netherlands, then in alliance; and that it was too late now, to urge, in exemption from an obligation then contracted, that the title of the Government was, in theory, defective. They would have said, that Nations have a right to regulate their own Governments; but that the Government that they may establish, or in which they may acquiesce, is their legal representative, and that they are bound by its acts, in their intercourse with foreign nations.

On these principles, the Government of King Louis was a legitimate Government, for the purposes of foreign relations.—But grant that King Louis was a usurper, that is, that his title was defective, though the nation acquiesced in it. The doubts and distinctions expressed by Grotius and Puffendorf, as to the obligation of the acts of a usurper, arise, altogether, from the variety of senses in which the term may be understood. A usurper, in the proper sense of the term, is a pretender to the Government, whose claims have not been acquiesced in by the people. He is considered by the publicists as at war with the nation: and the nation, by opposing and making war upon him, enters a perpetual protest against his authority. Still, he exercises the Government, and therefore, for certain purposes, in fact, represents the nation. Distinctions may, perhaps, in such a case, be reasonably taken in regard to the degree in which his acts are binding. The publicists are, evidently, much disposed, even under these circumstances, to make them obligatory. Puffendorf says, that there is no doubt, that all the public debts are binding—that the obligation of the other acts is less clear; but that, in his opinion, they are obligatory. He considers the precise case of the present claim, a valid and legitimate transaction: of course, the nation is responsible. The remark of Grotius is less favorable to the obligation of these acts; but, if it were more developed, would, probably, amount to the same thing, as he expressly enjoins in the same sentence, the duty of restitution: a duty which, it would seem almost needless to add, cannot be affected by any accident or violence that may have happened to the property to be restored. The case of the Emperor Napoleon, during the hundred days, is one of the strongest cases of usurpation that can be imagined. And yet the French nation, under another Government, is made responsible, not only for public debts, but for the remote consequences of his actions during these hundred days, to the amount of seven hundred millions of francs. Such are the opinions of the publicists, and the practice of Europe, in regard to the obligation of the acts of a usurper, taking the term in a strict and proper sense. They are, evidently, not unfavorable to the claim.—But taking the term in the only sense in which it can be applied to King Louis, a sovereign whose title is defective; but has received the acquiescence of the nation; and there is not a passage in any of the publicists which throws the least doubt upon the obligation of all his acts. The whole tenor of their writing shews that they regard such a Government as legitimate, not only for its foreign relations, but for all purposes whatsoever;

and Puffendorf states this doctrine expressly, in the very passage cited by Baron de Nagell.

The undersigned does not think it necessary to engage in a general defence of the ancient publicists against the repeated attacks of Baron de Nagell. The defects in their manner belonged to the age in which they wrote. Their merits are sufficiently proved by the use which has, constantly, been made of them up to the present day, in the parliamentary, diplomatic, and judicial discussions of Europe and America. The name of Grotius is regarded by foreigners as one of the titles of glory of which the Netherlands have to boast. Besides, the general principle of responsibility, in support of which they were quoted by the undersigned in his first note, is not denied by the Baron de Nagell. Consequently, the degree of weight which may, properly be attached to their authority, is, in this case, the less material. Notwithstanding these considerations, his excellency has employed a large part of his note of November, in citing from Puffendorf the passage which relates to this subject, and accompanying it by a commentary. The undersigned, from a real respect for any reasoning that is sanctioned by the authority of his Majesty's Government, will take the passage as cited, although some parts of it, favorable to the United States, are omitted, and will examine in detail the commentary that accompanies it. After quoting the passage, M. de Nagell annexes the following remarks:

1. " This being the passage in question; and it is only an exemplification of a parallel passage in Grotius, we can now judge how far it favors the reply. It is said to prove that a nation is not affected by changes in its form of government, and can only be destroyed by the destruction of the body politic: while Puffendorf formally excepts the case in which a state becomes a simple province of another state, and this was precisely the case of Holland by its incorporation with France."

Answer. This remark denies the fact of the confiscation by the Government of Holland, which is here supposed. If the property was confiscated by the French after the union, the French are of course, responsible. The question is here, whether the present government is responsible, provided the property was confiscated before the union by King Louis; or in M. de Nagell's own language, "on the supposition that the confiscation may be fairly attributed to Louis." The remark of Puffendorf establishes the doctrine of the United States to a greater extent than is necessary to support this claim, and refutes all the reasoning of Baron de Nagell from the supposed supremacy exercised by France over Holland during the reign of Louis. Puffendorf states, that, if one nation becomes a province of another in name and in reality, provided the province is governed in a separate form, the responsibility continues. It cannot be denied, that Holland was separate in form and independent in name.

2 " The passage is said to prove, that every government, which succeeds another, were the latter even founded in usurpation, is re-

sponsible for all the acts of the preceding government: and Puffendorf confines the obligation expressly to public debts, contracted for the wants of the state, and contents himself with pointing out what appears to him *not obligatory* but *reasonable* with regard to the rest.

Answer. Puffendorf, as cited by M. de Nagell, declares, in general, that the *treaties, contracts, and other acts* of governments are binding on their successors. He adds, that, in the case of a usurper, who had been dispossessed, and whose title has not been acquiesced in by the nation (which is, of course, not the present case) some have doubted whether any other engagements than public debts are binding, but that in his opinion *it is reasonable to consider them all obligatory*. The undersigned has repeatedly stated, that, in the view of his government, it is not necessary to examine, in this case, whether the acts of a usurper are binding on the successor; as far as he has considered this question, it has only been hypothetically.

“3. The passage is said to shew, that a people is bound to repair the injury done to foreigners; and the first case proposed by Puffendorf is, whether a people can keep what has been taken, bought, or given, by a usurper.”

Answer. The case proposed by Puffendorf is, whether a people ought to restore what has been taken by a foreign usurper from a third party in time of war, and given or sold to them. The present case is, whether a people ought to restore what has been taken by itself under a former Government from a friendly power. It is easy to see that they are not the same.

“4. Finally, it is said to prove that a people is held to restore what it has plundered, although the plunder may have passed into other hands; and Puffendorf, without examining, at all, in this second case, whether the duty of restitution is attached or not to the possession of the thing to be restored, decides, that, according to general usage, and the common opinion, if even *citizens* are not, as the reply vaguely translates the word, *individuals*, but oppressed citizens have been unjustly plundered by a usurper, they have no right to reclaim their property.”

Answer. Of whom does Puffendorf decide that they have no right to reclaim it? Of the usurper or his representatives? Just the contrary. They have no right to reclaim it of a third party, to whom the usurper has conveyed it—that is, in the present case, the Americans have no right to reclaim their property of France. This is the view taken of the subject by the American Government in bringing the claim against the Netherlands. As to the translation of the word *citoyens*, it is well known that the rights of friendly foreigners and citizens to the protection of Government are the same. To avoid an explanation, the undersigned translated the term at once by a word including the former.

“5. The only point, therefore, which the passage proves, is the distinction established by the undersigned, (Baron de Nagell,) between public debts, of which the acknowledgment and obligation cannot be contested; and engagements whose validity remains hypothetical.”

Answer. It has been shown in the answer to the second of these remarks, what foundation there is in Puffendorf for this distinction. Besides, the only difference between public debts and other engagements, is, that the former are acknowledged in a particular form; and M. de Nagell admits, in his note of November, that this circumstance makes no difference in the obligation. Hence, the distinction, if really taken by Puffendorf, has been formally disavowed by his Excellency. In general, any distinction that may be made between the degrees of obligation of various kinds of debts, must be founded on different considerations from those of right. Policy may dictate a preference of public debts over other engagements; but in principle there is no medium between what is due and what is not due.

The undersigned perceives with pleasure that Baron de Nagell is disposed to regard, with some attention, the reasoning in favor of the claim from the parallel cases, which occurred in France under the treaties of 1815. These examples are, also, considered by the American Government as among the strongest arguments in their behalf: and the more as they refute the objection of usurpation. The Government of Bonaparte, during the hundred days, independently of any supposed defects in his title, having no pretensions to the character of an established Government, may, perhaps, be fairly considered as strong an instance of usurpation as any on record; and, yet, as has been already observed, it was for the result of the acts of the French nation, during this period, that they were made responsible under Louis XVIII.

M. de Nagell has accumulated, in his note of November, a considerable number of passages from Schoell, and others, for the purpose of proving that the payments required of France were intended as an indemnity for the expense of the last preceding armaments. The undersigned never doubted this proposition, and, if he had, the slightest inspection of the treaties, and of the tables of distribution of the money paid, would have satisfied him of his error; but he must beg leave to express his opinion, that it does not destroy, in any degree, the application of the example. The acts of the French nation, during the hundred days, subjected the allies, in their opinion, to a great expense; and this expense the French nation, under the succeeding Government of Louis 18th, is required to pay. "In these payments," says M. de Nagell, "the principle of responsibility had no part." All that the American Government demand of the Government of the Netherlands, is to be indemnified for losses occasioned by the acts of the former Government. As the cases are evidently parallel, it is unnecessary to reason upon the propriety of words. The undersigned must, however, be permitted to observe that, in his opinion, to say that the French nation was required to indemnify the allies, for expenses occasioned by the acts of Bonaparte, is only to say, in other terms, that the French nation was made responsible for the acts of Bonaparte.

It is true that M. de Nagell has cited a passage from Schoell, in which that writer seems to intimate, in rather a vague way, that the payments

in question, were to be considered, in part, as a contribution imposed by right of conquest: in other words, as an act of arbitrary violence independent of any principle. The undersigned has shown, in a former note, that the principle of indemnity or responsibility, which is the same thing, is recognized by the Plenipotentiaries of both parties in their official correspondence, as the foundation of these payments. This idea of Schoell, therefore, (if, as may be doubted, he intended to convey the idea,) falls of itself; and it is too injurious to the allies to be insisted on by M. de Nagell. But, to remove all doubt upon this point, it is sufficient to add, that the allies, themselves, in the negotiations upon this subject, expressly disclaim any pretensions of this description. Their Plenipotentiaries observe in their note of September 22, 1815, "none of the propositions which have been made by order of the sovereigns, to regulate the present and future relations of Europe, has been founded on the right of conquest, and they have carefully avoided, in their communications, every thing that could lead to a discussion of this right."

The remark of M. de Nagell in his note of November, upon the case of the Bank of Hamburg, involves a denial of the fact of confiscation by King Louis which is here supposed by both parties. The principle maintained by the undersigned in a former note in regard to the confiscations in the Duchy of Berg was this: that nations are responsible for the acts of violence committed by their governments, but not for all those committed upon their territory. Baron de Nagell will judge for himself whether this is the principle he wishes to establish, recollecting, as has just been observed, that the act of confiscation is here supposed by both parties to be the act of King Louis.

The undersigned will not enter in detail into the particulars of the three cases, of the Baltimore, the Bacchus, and the St. Michael, which Baron de Nagell has, again, introduced at the commencement of his note of November. No essential error has been pointed out in the statement of the undersigned respecting them. M. de Nagell again attributes to the undersigned an opinion respecting the protection granted to the Baltimore, which it was never his intention to express and which he formally disavowed in his note of July. The variation in the date of the arrival of this vessel might have been important had the claim been founded on the sequester; but, as it is founded on the confiscation of the property, it is, evidently, immaterial. Baron de Nagell charged Mr. Eustis with error in stating that the cargoes of the Baltimore and the Bacchus were confiscated by order of the Dutch Government, while, in the same note, he observed himself, of these two cargoes, that they were delivered to the French by virtue of the treaty of March, 1810; which was the act of confiscation intended by Mr. Eustis. This was the particular variation concerning which the undersigned took the liberty of observing that Baron de Nagell was himself in error by his own admission.

His Excellency has thought proper to quote a second time certain expressions applied by the undersigned in his note of February, to the confiscation of shipwrecked property, with the remark, that, by

these expressions "the claimants have committed their protectors." The sense of this remark is not apparent, and the undersigned is, therefore, unable to judge of its propriety. He can only observe, that, in his opinion, the confiscation of the property of a friendly nation, thrown into the power of the government by shipwreck and stress of weather; or invited by facilities held out by itself, is an act of violence, which, whether it is to be attributed to France or Holland, is deserving of the strongest terms of disapprobation that language can afford. As the two governments look at the facts from different points of view, it is not singular that they should form different judgments of the moral character of the proceedings of the Government of Holland, according as they attribute to it a more or less immediate agency in the confiscation; and each may be right on its own supposition of fact. The undersigned must, however, be allowed to add, that he finds it impossible to reconcile with the facts even as viewed by the Government of the Netherlands, the assertion of Baron de Nagell in regard to the *St. Michael*. The *St. Michael* was a ship bound to a different port and driven into the Texel by stress of weather, seeking only the hospitality of the shore and leave to depart. By the admission of M. de Nagell her cargo was sequestered by the Government of Holland; and yet he adds, that she was treated as she would be any where else. The undersigned is not acquainted with any civilized nation, where it is the practice to sequester the property of citizens of a friendly power, driven into port by stress of weather.

The undersigned has now examined the several parts of M. de Nagell's last notes, and replied to them in a manner which appears to him to be satisfactory. He is aware, however, that, from the different views of the two governments with regard to this subject many of the considerations here adduced will be thought less forcible by His Excellency; and that, in general, the effect of a discussion so long protracted as this, is rather to confirm the respective opinions of the parties than to change them. He is, therefore, compelled, though reluctantly, to anticipate the failure of this attempt, as well as of the others which he has already made, to bring this claim to the conclusion desired by his government. In this event it would be unreasonable to calculate upon a favorable result from any further proceedings in the way of direct negotiation; and as the United States are not less unwilling to abandon the claim than the Netherlands are to allow it, it will become necessary, on the failure of this method, to adopt some other way of bringing the controversy to an amicable conclusion. For this purpose the undersigned has the honor of submitting to the consideration of his excellency the following propositions as likely, if adopted, to produce a result, which, in either event, shall be satisfactory to both parties.

1. It is proposed that an impartial commission should be instituted by the two governments in concert, to make a preliminary examination of the facts, as far as they affect the question of responsibility, and agree upon a statement of them to be reported to the governments.

2. If, upon this statement of facts, the two governments should still differ upon the question of responsibility, it is proposed that this point should be referred to the decision of some friendly sovereign, to be agreed upon between them.

As the Government of the Netherlands appear to rest their defence, in a considerable degree, upon a denial of the facts which were supposed by the American Government, in the first instance, to be admitted, it seems to be absolutely necessary that this part of the subject should be submitted to an inquiry of the kind contemplated in the first of these propositions. The American Government is ready to substantiate by evidence the facts which they consider necessary to the establishment of the claim; and it is presumed that the Government of the Netherland is also prepared to support, in the same way, those which they regard as contradictory to it. It is obvious that an examination of this kind cannot be conveniently conducted in the way of diplomatic correspondence; but must be referred to a commission constituted in such a way that both parties may be able to rely upon its decision.

The result of such an inquiry having defined with precision the basis of fact upon which the question of responsibility is raised, this question would, probably, be brought within much narrower limits; but, should the two governments finally disagree respecting it, the mode of reference to a friendly sovereign seems to be an unexceptionable way of bringing it to a decision.

No. 15.

Extract of a letter from Mr. Adams to Mr. Everett, Chargé d'Affaires at the Hague, 26th May, 1820.

“Your despatches to No. 43, inclusive, dated 13th March, have been received. Your discussion of the claims of our citizens upon the Government of the Netherlands, has been entirely satisfactory to the President. who regrets that its just reasoning, and forcible appeals to well established facts, has not been attended with success in producing the conviction, on the part of the Government of the Netherlands, that it was in justice incumbent on them to make provision for indemnifying the sufferers interested in them. On taking leave, the Viscount de Quabek, under instructions from his Government, intimated verbally to me their wish that this discussion should not be further pressed; and although he was distinctly informed that the rights of our citizens to indemnity for injuries so unjustifiable and flagrant, could not be abandoned by this Government, the President believes that it may be expedient to forbear renewing applications in their behalf, for the present. Your last note, therefore, of which you have forwarded to me the draft, may be reserved until you hear further from this Department on the subject.”

